

## **Procedure III.3006.D.a, Allegations of Sexual Misconduct**

### **Associated Policy**

Policy III.3006.D, Sexual Misconduct

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#### **1. General Restatement of Policy**

It is the policy of San Jacinto College to provide a campus environment free from Sexual Misconduct. College policy recognizes and prohibits two categories of "Sexual Misconduct": (1) Title IX Sexual Harassment; and (2) Other Inappropriate Conduct.

The College prohibits any student, employee, or third party from perpetrating Sexual Misconduct against any student, employee, or third party in any manner prohibited by College policy or procedure. College policy also prohibits retaliation against any individual that interferes with any right or privilege secured by this Procedure or related policy or law or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Procedure. A glossary of terms is found in Section 12 of this Procedure. "Title IX Sexual Harassment" and "Other Inappropriate Conduct" are defined as follows:

##### **1.1 Title IX Sexual Harassment**

"Title IX Sexual Harassment" is sexual harassment as defined by regulations implementing Title IX of the Education Amendments of 1972, 34 C.F.R. section 106.30. This definition applies to sexual harassment in a College education program or activity in the United States. Under the definition, covered conduct must satisfy one or more of the following:

- a) Harassment by an employee of the College in which the employee conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct ("quid pro quo" harassment);
- b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity; or

- c) “Sexual assault,” “dating violence,” “domestic violence,” or “stalking” as defined in the Glossary of Terms in Section 12 of this Procedure.

The term “education program or activity” includes places, programs, events, and circumstances over which the College exercises substantial control over both the alleged perpetrator and the context in which the sexual harassment occurred. The term also applies to any building owned or controlled by a student organization officially recognized by the College.

## **1.2 Other Inappropriate Misconduct**

“Other Inappropriate Misconduct” is an umbrella term that refers to sexual conduct that does not satisfy the definition of “Title IX Sexual Harassment” but that is nonetheless inappropriate in a collegiate environment. Other Inappropriate Misconduct violates the College’s Sexual Misconduct Policy if it occurs on campus or within an education program or activity of the College or if it occurs off-campus but adversely impacts the College’s education programs and activities or interferes with a person’s ability to participate in or benefit from the College’s education programs and activities. Such conduct violates College policy if it is objectively offensive to a reasonable person and the affected individual actually perceived the conduct as harassing or abusive.

Other Inappropriate Misconduct includes, but is not limited to, the following prohibited conduct:

- 1.2.1** “Sexual harassment” as defined under the Texas Education Code, sec. 51.251(5). This statute prohibits unwelcome, sex-based verbal or physical conduct that: (A) in the employment context, unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment; or (B) in the education context, is sufficiently severe, persistent, or pervasive and interferes with a student’s ability to participate in or benefit from educational programs or activities at the College.
- 1.2.2** Unwelcome sex-based advances or propositions; unwelcome requests for sexual favors; unwelcome physical contact or touching of a sexual nature; persistent and unwanted sexual attention; voyeurism; unwelcome sexual gestures; public exposure of one’s sexual organs on campus or at an event under the control of the College; displaying obscene materials in a public place on campus; forwarding pornographic or obscene material via email or text to non-consenting recipients; recording or photographing sexual activity or a person’s genital area or breast area or from a vantage point that a reasonable person would view as an invasion of personal privacy; and allowing a third party to view consensual sex without the knowledge of the other participant.
- 1.2.3** Unwelcome comments of a sexual nature that a reasonable person would view as gratuitous, intimidating, offensive, and/or degrading and that adversely impacts an individual’s educational environment. The College’s definitions are not intended to restrict constitutionally protected speech. In the academic context, including the context of a classroom discussion or preparation of a course assignment, a relevant factor is whether the comments are reasonably related to course content or serve a legitimate pedagogical function.
- 1.2.4** Conduct of a sexual nature that is consensual between two or more parties but is nonetheless inappropriate in an educational environment, such as engaging in

consensual sexual acts in a campus building or displaying sexually oriented objects or materials in the presence of third parties while on campus.

### **1.3 Resolution of Conflicting Definitions**

In the event of overlapping or conflicting definitions, the College shall construe its policies and procedures to provide students with the maximum protection required by law.

### **1.4 Retaliation**

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Procedure or related policy or law or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this Procedure. The definition of retaliation also applies to acts of intimidation, threats, coercion, or discrimination, including a charge against an individual for code of conduct violations that do not involve sexual discrimination or Sexual Misconduct but that arise out of the same facts or circumstances as a report or complaint of sexual discrimination or Sexual Misconduct when the purpose of the charge is to interfere with a right or privilege secured by this Procedure or related policy or law.

The following acts are not retaliation:

- Investigating or imposing consequences against a party or witness for knowingly making false statements or knowingly submitting false information about a report, complaint, investigation, proceeding, or hearing under this Procedure.
- Charging an individual with one or more code of conduct violations that do not involve sexual discrimination or Sexual Misconduct but that arise out of the same facts or circumstances as a report or complaint of sexual discrimination or Sexual Misconduct or a report or formal complaint of Sexual Misconduct for a purpose that is not related to interfering with any right or privilege secured by this Procedure or related policy or law.
- Petty slights and annoyances.

Any student who believes that they have been subjected to retaliation may file a complaint under Complaint Procedure 200 in the [Student Handbook](#). Any employee who believes that they have been subjected to retaliation may file a complaint under Human Resources Procedure 3-19(A)(2). Third parties may file a complaint alleging retaliation to the Office of Compliance and Judicial Affairs.

### **1.5 Implementation of Procedure, Policy, and Law**

The College's Title IX Coordinators coordinate the College's response to reports of Sexual Misconduct and implement this Procedure and related policy and law. The names of the College's Title IX Coordinators and their contact information is available on the College's website at [Reporting Sexual Misconduct](#).

This Procedure implements legal requirements found in Title IX of the Education Amendments of 1972 and its implementing regulations; the Clery Act and its implementing regulations; and the Texas Education Code, chapter 51, subchapter E-2.

## **2. General Statement Empowering College Community**

This procedure distinguishes between *reporting* allegations of Sexual Misconduct and *filing* a Formal Complaint of Sexual Misconduct.

A “report” informs the College of an alleged incident of Sexual Misconduct. Any person can make a report. Reporting an allegation does not necessarily result in an investigation or a grievance process under this Procedure. Investigation and adjudication of a report will occur, in most cases, only if the alleged victim of the Sexual Misconduct files a “Formal Complaint.” An alleged victim may seek supportive services with or without filing a Formal Complaint.

A Formal Complaint is a written, signed document asking the College to investigate and adjudicate allegations of Sexual Misconduct. A Formal Complaint is necessary for the College to investigate and adjudicate allegations of Sexual Misconduct through these procedures. A Formal Complaint may be delivered in person or submitted by mail, electronic mail, or via the College’s online incident portal ([Reporting Sexual Misconduct Form](#)).

If the information is available, individuals should describe all incidents or actions considered to be Sexual Misconduct in the Formal Complaint, including the following:

1. Alleged victim’s name and contact information;
2. Alleged perpetrator’s name;
3. A detailed description of the alleged conduct or event(s) that underlie the alleged violation under College Policy;
4. Date(s) and location(s) of the alleged occurrence(s);
5. Names of any witnesses to the alleged occurrence(s); and
6. The resolution or remedy sought.

Accordingly, if an alleged victim of Sexual Misconduct would like the College to investigate and adjudicate alleged misconduct, they should file a Formal Complaint under this Procedure. Although a Formal Complaint may be filed at any time, the College encourages individuals to report their concerns as soon as possible after the alleged incident(s) so that prompt action can be taken to investigate and resolve the complaint. A delay in reporting may result in a loss of evidence or witness availability and, in extreme cases, dismissal of a Formal Complaint.

## **3. Reporting by Employees; Consequences for Failure to Report**

Any employee who in the course and scope of their employment observes or receives information regarding an alleged incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, domestic violence, and stalking by or against a San Jacinto College student or employee must promptly report the known information to one of the College’s [Title IX Coordinators](#) following Section 3.1 of this Procedure unless an express exception applies as outlined in Section 3.2.

Employees who knowingly fail to make a mandatory report required by Section 51.552 and 51.255 of the Texas Education Code are subject to termination under College termination procedures. Additionally, employees who fail to make a mandatory report of an incident involving an employee or student are subject to criminal prosecution as stated in Section 51.252 and 51.255 of the Texas Education Code.

Employees also shall report alleged incidents that they reasonably believe constitute Sexual Misconduct by or against an individual who is attempting to participate in an education program or activity

of the College. When in doubt about whether an incident should be reported, employees should err on the side of reporting.

### **3.1 Reporting Process for Employees**

Employees should fulfill their mandatory reporting obligation by speaking with or emailing a College Title IX Coordinator about suspected Sexual Misconduct or submitting a report via the College's online portal at [Employee Reporting Sexual Misconduct](#).

When making a report, the employee shall report all known information regarding the incident, including, if available, the names of all known alleged victims and alleged perpetrators, a detailed description of the alleged conduct, and the date, time, location, and nature of the alleged incident. The employee shall notify a Title IX Coordinator if the alleged victim has requested confidentiality, but such a request never relieves the employee from the responsibility to report known information about alleged Sexual Misconduct to a Title IX Coordinator.

### **3.2 Limited Exceptions for Mandatory Reporting**

Employees with a legal duty of confidentiality—such as a licensed professional counselor providing therapeutic services—must report only the type of incident (e.g., sexual assault or stalking). They are not required to provide any other details, such as the names of the individuals involved in the incident.

A campus peace officer who receives information from an alleged victim who chooses to complete a pseudonym form as stated in the Texas Code of Criminal Procedure, shall, in making a report to the Title IX Coordinator, state only the type of incident reported and may not include the victim's name, phone number, address, or other information that may directly or indirectly reveal the victim's identity.

Employees are not required to report alleged Sexual Misconduct incidents in which they were the victim.

### **3.3 Other Reporting Obligations Not Affected**

An employee who makes a report under this Procedure may have additional reporting obligations under other laws.

According to the Clery Act, employees who are Campus Security Authorities (CSA) must report specific incidents to Campus Police.

Any employee who has cause to believe that a child's physical or mental health or welfare has been adversely affected by sexual abuse, child abuse, or neglect by any person must report the suspicion as required by chapter 261 of the Texas Family Code. A child is a person who is 17 years old or younger. An employee that suspects abuse or neglect of a child must report the suspicion to the Texas Abuse Hotline (1-800-252-5400) at the Texas Department of Family and Protective Services (DFPS) within 48 hours. If the child is in immediate danger, the employee should first call 9-1-1 and then the Texas Abuse Hotline.

#### **4. Reporting Procedures for Students and Individuals Who Are Not Employees**

Reporting procedures for employees are addressed in Section 3. Section 4 describes the reporting procedures for students and other individuals who are not employees.

##### **4.1 Reporting Sexual Misconduct to the College**

The College encourages individuals to report Sexual Misconduct directly to one of the College's Title IX Coordinators in person or by mail, telephone, or electronic email using the contact information on the College's website ([Reporting Sexual Misconduct](#)), via the College's online portal ([Reporting Sexual Conduct Form](#)), or by any other means that results in a Title IX Coordinator receiving the person's verbal or written report. A report may be made at any time, including during non-business hours, using the telephone number or electronic mail address or mail to the office address listed for a Title IX Coordinator.

Officials with Authority (OWA) are employees of the College explicitly vested with the responsibility to implement corrective measures for sexual harassment on behalf of the College. Although the College encourages individuals to report Sexual Misconduct directly to a Title IX Coordinator, Joanna Zimmermann, Associate Vice Chancellor of Student Services by calling 281-478-1863 or Sandra Ramirez, Vice Chancellor, Human Resources, Organizational and Talent Effectiveness by calling 281-991-2659, individuals also may make reports to the following employees who are designated as OWAs:

- 4.1(a)** For allegations of Sexual Misconduct against students, the Dean of Compliance & Judicial Affairs by calling 281-478-2756;
- 4.1(b)** For allegations of Sexual Misconduct against employees, the Vice President of Human Resources by calling 281-998-6115;
- 4.1(c)** For allegations of Sexual Misconduct against a Title IX Coordinator, with the Vice Chancellor of Fiscal Affairs by calling 281-998-6306;
- 4.1(d)** For allegations of Sexual Misconduct against the Chancellor or any Board member, the Board Chairperson; and
- 4.1(e)** For allegations of Sexual Misconduct against the Board Chairperson, the Vice-Chairperson.

##### **4.2 Confidential Consultations Instead of Reporting**

Any student who is the alleged victim, alleged perpetrator, or a witness in an incident of alleged Sexual Misconduct may seek or benefit from counseling or psychological care, regardless of whether the individual makes a report. A student may obtain such support from a private provider at their own expense but may also obtain support from the College's Educational Planning, Counseling, & Completion office. Students may confidentially discuss an incident of Sexual Misconduct with a counselor at any of the College's Educational Planning, Counseling, and Completion Offices without concern that the student's identity will be reported to a Title IX Coordinator or to law enforcement. Counselors will not report the student's name or details without consent but must report the type of incident (*e.g.*, sexual assault or stalking) (see Section 3.2).

Students seeking counseling may contact an Educational Planning, Counseling, and Completion Office at the following numbers:

Central & Maritime Campuses	281-478-2768
North & Generation Park Campuses	281-459-7192
South Campus	291-922-3444

Employees may confidentially discuss an incident of Sexual Misconduct with the College's EAP (Employee Assistance Program) at 713-500-3327 without concern that the employee's identity will be reported to a Title IX Coordinators or law enforcement. EAP counselors will not report the employee's name or details without the employee's consent.

An individual's counseling, EAP, and medical records are confidential and will not be used by the College in a Sexual Misconduct grievance process without the individual's written consent.

### **4.3 Anonymous Reports**

Any person may make an anonymous report to a Title IX Coordinator via the College's online portal ([Reporting Sexual Misconduct Form](#)) or by sending a written letter via email, U.S. mail, or hand delivery. However, depending on the facts and circumstances of the anonymous report and the incident being reported, the College may be limited in its ability to stop the alleged conduct, collect evidence, or remedy the situation. A report may be characterized as anonymous if the name of the reporting party is unknown or if the names of the alleged victim and/or respondent are unknown.

### **4.4 Reports to Law Enforcement and Outside Entities**

The right to report Sexual Misconduct to the Title IX Coordinator and College Administration is separate from the right to make a report to the police or other external entities. Victims of sexual misconduct and others may report to such entities regardless of whether they have made a report to the College. Additional reporting options include the following:

**4.4.1 Reporting to Law Enforcement:** Any person can and should promptly report a crime to law enforcement by calling 9-1-1. Any person can also report a crime to the San Jacinto College (SJC) Police Department (281-476-9128) or another police agency with jurisdiction. A police department's geographic jurisdiction will depend on the location of the incident. (A list of other police agencies near and around the College's campuses is available on the College's website at <https://www.sanjac.edu/student-life/campus-safety/local-jurisdictions>.) The SJC police or other police agency may share the report with the College's Title IX Coordinators. Prompt reporting will aid in the preservation of evidence.

The College leaves to the discretion of the alleged victim whether to report to law enforcement in most cases. An individual may request that a Title IX Coordinator assist with making a police report or otherwise coordinating with the police.

**4.4.2 Medical Care and Evidence Preservation:** Victims of Sexual Misconduct, especially sexual assault or violence, are encouraged to seek medical care as promptly as possible after the incident. Seeking medical assistance is essential to obtain treatment and medication, if needed, and to preserve evidence related to Sexual Misconduct, including DNA evidence and evidence of bruising or other injuries. Victims should avoid washing, showering, or changing clothes, if possible, before a medical exam or treatment. Clothing, if removed, should be placed in a paper bag. Email threads, text message conversations, and other communications and electronic documents should be saved and not altered.

Victims of Sexual Misconduct should consider seeking a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) if the incident occurred within the previous four calendar days. For more information, please see <https://www.texasattorneygeneral.gov/crime-victims/services-crime-victims>. The cost of the forensic portion of the exam is covered by law enforcement or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

#### **4.4.3 Other External Reports:**

Individuals may make a confidential report to a community rape crisis center, clergyperson, or a health care provider of the student's choice. Community resources are identified on the College's website online at [Mental Health Resources](#).

Any person may make a confidential report to a community rape crisis center, clergyperson, or a health care provider of the employee's choice without the receiving party reporting the alleged victim's name or details to the Title IX Coordinator without the alleged victim's consent.

Any person may contact the Office for Civil Rights to report a violation of or to get more information regarding Title IX Sexual Harassment:

Office for Civil Rights  
U.S. Department of Education  
1999 Bryan St., Suite 1620  
Dallas, Texas 75201-6810  
214-661-9600  
214-661-9587 (fax)

### **5. Immunity from Discipline**

To encourage reporting of Sexual Misconduct, the College will grant immunity (also known as amnesty) from disciplinary action to students and employees who in good faith report Sexual Misconduct, file a Formal Complaint, or participate as a witness in a Sexual Misconduct grievance process. For example, a student who reports in good faith that they were a victim of sexual assault will not face disciplinary charges for other Code of Student Conduct violations, such as underage drinking, that occurred in conjunction with the alleged Sexual Misconduct. A person who allegedly engaged in Sexual Misconduct cannot avoid discipline by reporting their acts of Sexual Misconduct and may be disciplined for code of conduct violations that occurred in conjunction with Sexual Misconduct for which there is a finding of sufficient evidence.

While no disciplinary action will be taken against reporting parties, alleged victims, or witnesses in these situations, the College may address health and safety concerns for the individual or community, including student organizations, based on information learned from a report or Formal Complaint of Sexual Misconduct.

### **6. The College's Initial Response to a Report of Sexual Misconduct**

#### **6.1 Notice of Supportive Measures and Right to File a Formal Complaint**

Promptly after receiving a report of Sexual Misconduct from an employee, student, or any other person, a Title IX Coordinator or designee must contact the alleged victim to discuss the availability of Supportive Measures, consider the alleged victim's wishes concerning supportive measures, inform the alleged victim of the availability of supportive measures with or without the filing of a formal complaint, and explain to the alleged victim the process for filing a formal complaint.

Supportive Measures are non-disciplinary, non-punitive, individualized services offered when appropriate and reasonably available without fee or charge in connection with a report or Formal Complaint of Sexual Misconduct. Supportive Measures are sometimes referred to as supportive services, protective measures, interim measures, or accommodations.

Supportive Measures are available to alleged victims of Sexual Misconduct upon receipt of a report of alleged Sexual Misconduct, even if no Formal Complaint is filed. After a Formal Complaint has been filed, supportive measures are available to both the alleged victim (the “complainant”) and the alleged perpetrator (the “respondent”).

Supportive Measures are designed to restore or preserve access to the College’s education program or activity without unreasonably burdening the other party; protect the safety of all parties and the educational environment; and deter sexual harassment and other sexual misconduct. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Under state law and College Policy, alleged victims and perpetrators may drop a course in which both parties are enrolled without an academic penalty.

Measures that are punitive or disciplinary cannot be Supportive Measures and cannot be implemented unless after a grievance process under Sections 9 or 10 there is sufficient evidence to support the allegations. However, Supportive Measures that burden a party are permitted so long as the burden is not unreasonable.

Emergency Removals and Administrative Leaves are neither disciplinary nor Supportive Measures (see Section 6.3).

The Title IX Coordinator(s) or designee(s) has the discretion to offer Supportive Measures to a reporting party or other third party who is not the alleged victim of Sexual Misconduct. For example, a Title IX Coordinator or designee might exercise their discretion if a reporting party alleges that the conduct, although perpetrated against someone else, created a hostile environment for the reporting party in the College’s education program or activity.

The College must maintain as confidential any supportive measures provided under this Procedure to the extent that maintaining confidentiality would not impair the College’s ability to provide the supportive measure. The Title IX Coordinators are responsible for coordinating the effective implementation of supportive measures.

## **6.2 Evaluation of Allegations; Written Notice of Formal Complaint Process**

In response to a report of Sexual Misconduct involving a known alleged victim, the Title IX Coordinator or designee should evaluate the reported allegations to determine whether the allegations, if proven, would constitute Title IX Sexual Harassment or Other Inappropriate Conduct. If the report is by or against a College employee, the Title IX Coordinators for both students and employees, or their designees, must confer on whether or not the report alleges Title IX Sexual Harassment or Other Inappropriate Conduct.

If the report alleges Title IX Sexual Harassment, the Title IX Coordinator or designee should provide written notice of the right to file a Formal Complaint under Section 9 of this Procedure. If the report alleges Other Inappropriate Conduct, the notice should address the right to file a Formal Complaint under Section 10 of this Procedure.

If the Title IX Coordinator(s) or designee(s) lack sufficient information to decide whether the alleged misconduct is Title IX Sexual Harassment or Other Inappropriate Conduct, the Title IX Coordinator(s) or designee(s) may communicate with the alleged victim and, if necessary, any other reporting party to obtain more information about what has been alleged. Such communication aims solely

to understand what is alleged, not to investigate the allegations. *The need to clarify allegations should not delay in offering Supportive Measures to the alleged victim under Section 6.1; when appropriate, two separate notices can be sent, one addressing Supportive Measures under Section 6.1 and then, after necessary information is obtained, one addressing the Formal Complaint process under this Section 6.2.*

After receiving additional communication from the alleged victim and/or any other reporting party, if the Title IX Coordinator(s) or designee(s) still lack sufficient information to decide which process may be applicable, the Title IX Coordinator(s) or designee(s) will provide notice of the right to file a Formal Complaint under Section 9 with the understanding that the complaint could be dismissed under Title IX if, upon receipt of further information about the allegations, it becomes clear that Section 9 is not the appropriate process.

If a third party who is not the victim of the alleged conduct reports Other Inappropriate Misconduct, the Title IX Coordinator(s) or designee(s) have the discretion to allow the reporting party to file a Formal Complaint. For example, the Title IX Coordinator or designee may exercise that discretion if the reporting party alleges that the conduct, although perpetrated against someone else, created a hostile environment for the reporting party in the College's program or activity. *However, if the reported conduct is of Title IX Sexual Harassment, a third party cannot file a Formal Complaint in any circumstance where they are not the alleged victim of the Sexual Misconduct being reported.*

### **6.3 Emergency Removal or Administrative Leave**

**6.3.1 Emergency Removal:** In some circumstances, the College may determine that removing a student or other individual who is alleged to have engaged in Sexual Misconduct from campus would be appropriate before determining responsibility. To remove a person through an emergency removal, the College must undertake an individualized safety and risk analysis, determine that there is an immediate threat to the physical health or safety of a student or other member of the campus community arising from the allegations of misconduct, and provide the individual to be removed written notice and an opportunity to challenge the emergency removal. Emergency removal can be from a specific activity or temporary suspension from all campuses and activities.

If a student is subjected to emergency removal, the College shall send written notice to the person via (i) hand delivery or (ii) electronic mail and first-class U.S. mail. A student who is subject to an emergency removal can request, in writing to a Title IX Coordinator, a meeting regarding the appropriateness of the removal decision before processing the underlying report of misconduct. A proceeding to consider an emergency removal of a student does not decide the underlying charge. The student's request must be in writing and submitted to a Title IX Coordinator within five calendar days of the emergency removal. The Title IX Coordinator will hold the meeting within five working days of receiving the student's request, barring unforeseeable circumstances. For students, the meeting shall be conducted by the senior instructional leader at the campus where the student is enrolled or, if that leader is involved in any way in the underlying charge of misconduct, by the senior instructional leader from another College campus.

For non-students subjected to emergency removal, the College will provide the removed individual immediately following the removal with notice and an opportunity to be heard regarding the decision in a meeting with a Title IX Coordinator or designee.

An emergency removal will take effect immediately even if the individual removed seeks an opportunity to contest the removal.

**6.3.2 Employee Administrative Leave:** In some circumstances, the College may determine that removing an employee who is alleged to have engaged in Sexual Misconduct would be appropriate before a determination of responsibility. Administrative leave can include a temporary reassignment, restrictions on access to a part of campus, or suspension from campus. Administrative leave of an employee must be approved by the Chancellor or the Chancellor's designee. The terms and conditions, including the employee's pay status, shall comply with relevant College policies and procedures.

**6.3.3 No Modification of Other Rights:** The provisions relating to emergency removal and administrative leave may not be construed to modify any rights that a student or employee may have under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

## **7. Confidentiality**

Individuals identified as alleged victims, alleged perpetrators, and witnesses in Sexual Misconduct cases may want privacy and to avoid public disclosure of their names. The College seeks to be respectful of each person's interest in privacy. Certain laws restrict the disclosure of student records and records relating to sexual harassment and sexual assault. *See* Family Educational Rights & Privacy Act, 34 C.F.R. part 99; Texas Education Code § 21.256, § 21.291.

However, under state and federal law, most College employees must report sexual harassment, sexual assault, dating violence, domestic violence, and stalking to a Title IX Coordinator. Additionally, when a Formal Complaint of Title IX Sexual Harassment is initiated, the investigation process requires certain disclosures, including the parties' and witnesses' names and the basic details of the alleged incidents, to conduct a fair and thorough investigation.

The College will share information with individuals only as necessary. Examples of individuals with whom information may be shared include investigators, witnesses, alleged victims, alleged perpetrators, parties' advisors, decision-makers, appellate officers, College administrators, attorneys, and trustees responsible for overseeing compliance with this Procedure and applicable law.

## **8. Alleged Victim's Request Not to Investigate Under This Procedure**

In some instances, an alleged victim of Sexual Misconduct will decline to file a Formal Complaint and will ask that the College not investigate allegations under this Procedure. In others, the alleged victim may not be known or may not be willing to speak with the College at all. Because proceeding with an investigation in such circumstances could go against the alleged victim's wishes, lead to unwanted disclosure of the alleged victim's name and allegations, and/or create the potential for an investigation and adjudication without the alleged victim's participation, the College must weigh the rights, interests, and safety of all parties and the larger campus community.

In weighing a request not to investigate, the College will consider whether it would be unreasonable in light of the known circumstances not to investigate, considering the following factors, among others:

1. The seriousness of the alleged conduct;
2. Whether the College has received other reports of Sexual Misconduct involving the same alleged perpetrator(s);
3. Whether there is a risk of harm to others; and
4. Any other evidence that the College determines to be relevant to the analysis.

If an alleged victim requests that the College not investigate a report of Sexual Misconduct, a Title IX Coordinator or designee will inform the alleged victim in writing of the decision whether or not to

investigate. If the Title IX Coordinator decides not to investigate, the College will take steps determined to be possible and necessary to mitigate risks to the health and safety of the College community concerning the alleged incident.

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

Section 9 describes the grievance process for Title IX Sexual Harassment. The College can investigate and adjudicate allegations of Title IX Sexual Harassment only if there is a formal complaint on file. A 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 College investigate the allegation of sexual harassment. When filing a Formal Complaint, a complainant must be participating in or attempting to participate in the College's education program or activity.

If the complainant has not filed a Formal Complaint of Title IX Sexual Harassment, a Title IX Coordinator must consider whether it would be unreasonable in light of the known circumstances not to initiate an investigation under this grievance process. If the Title IX Coordinator determines it would be unreasonable in light of the known circumstances not to investigate and adjudicate, the Title IX Coordinator will sign a Formal Complaint on behalf of the College. In such cases, the alleged victim is the "Complainant" and has all rights outlined in this Procedure for complainants. The Title IX Coordinator who signs the Formal Complaint is not a party to the Formal Complaint. However, the complainant is not required to participate in the grievance process, and no adverse inference will be drawn based on the complainant or any other party's nonparticipation.

The Title IX grievance process requires that the College treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility has been made against the respondent, and by following a grievance process that complies with the Title IX regulations before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a respondent. The process also includes a presumption that the respondent is not responsible for alleged conduct until a determination regarding responsibility is made, using a preponderance of the evidence standard, at the end of the grievance process.

Any individual designated by the College as a Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator for this grievance process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The College must ensure that Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators receive training on the definition of sexual harassment, the scope of the College's education program or activity, how to conduct an investigation and grievance process, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train Title IX team members must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints.

The parties have an equal right to have an advisor of their own choosing present during any part of the grievance process, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The College will not limit the choice or presence of the advisor for either party in any meeting or grievance proceeding. However, the College has established restrictions regarding the extent to which advisors may participate in proceedings. Advisors may not actively participate in meetings, interviews, or hearings unless both parties' advisors are notified in writing that they may participate and in what manner before the meeting or proceeding in which participation is allowed. If a party has an advisor, the party must provide the name and contact information of the advisor to the Title IX Coordinator no later than 24 hours before the first meeting or proceeding the advisor will attend unless the first proceeding is the hearing, in which case notice must be provided no later

than five calendar days before the hearing. The notice must state whether the College is authorized to communicate with the advisor and share information as required by this Procedure.

The process includes reasonably prompt time frames for completion. Temporary delays of the grievance process or the limited extension of time frames for good cause are allowed with written notice to the parties and, if the extension is sought by someone other than a Title IX Coordinator, to the Title IX Coordinator(s). Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; a public health emergency; or the need for language assistance or accommodation of disabilities.

When this grievance process requires notice to the parties, notice shall be provided by regular first-class mail and/or email to the College email address or other email address designated by the parties. A first-class letter will be deemed to have been received on the third day after the date of mailing, excluding any intervening Sunday or federal holiday. An email will be deemed to have been received on the second day after sending the message. A party's failure to update their postal and email addresses with the College, refusal to accept delivery of a letter, or refusal or failure to open email will not constitute good cause for failure to comply with a notice.

Any provision, rules, or practices other than those required by this section that the College adopts or uses as part of its grievance process will apply equally to both parties.

### **9.1 Notice of Allegations**

Upon receipt or signing of a Formal Complaint of Title IX Sexual Harassment, a Title IX Coordinator or designee must notify all known parties (alleged victims, or "complainants," and alleged perpetrators, or "respondents") of the allegations in writing. The notice of allegations must be provided even if the Formal Complaint is subject to dismissal. If the Formal Complaint involves an allegation by or against an employee-respondent, a member of the Human Resources-Employee Relations Department will provide the notice of allegations to the employee-respondent.

The notice of allegations must include, at a minimum:

- Sufficient details known at the time with sufficient time to prepare a response before any initial interview of any party. Sufficient details include the identities of the parties involved in the incident if known, the conduct allegedly constituting Title IX Sexual Harassment, and the date and location of the alleged incident, if known. In most cases, 24 hours will be sufficient after the College provides the notice of allegations for the parties to prepare a response before any initial interview. A party may request additional time if needed.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made after the grievance process.
- Notice that the parties may have an advisor of their choice, who may be an attorney, but is not required to be, and may inspect and review directly related evidence at the end of the investigation.
- Notice that this Procedure prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the College will provide supplemental notice of the additional allegations to the parties whose identities are known at that time.

### **9.2 Evaluation for Jurisdiction; Application of Section 9 Grievance Procedure**

After sending the Notice of Allegations, the Title IX Coordinator or a designee will determine whether the Formal Complaint includes allegations which, if proved, would be Title IX Sexual Harassment. If an employee is a complainant or respondent, the Title IX Coordinators for both students and employees, or their designees, must confer on whether there is jurisdiction.

If the Formal Complaint is missing pertinent information necessary to evaluate the College's jurisdiction, such as the location of the incident, the Title IX Coordinator or designee shall provide the complainant a reasonable amount of time to provide supplemental information before deciding that there is no Title IX jurisdiction. The purpose of communication with the complainant at this stage is solely to understand what is alleged, not to investigate the allegations.

After the evaluation is complete, the Title IX Coordinator(s) or designee(s) will use this Section 9 Title IX Grievance Process to process allegations that, if proved, would be Title IX Sexual Harassment. Additionally, if the complaint includes allegations of Other Inappropriate Conduct that occurred in conjunction with Title IX Sexual Harassment, this Section 9 Title IX Grievance Process will apply to both categories of alleged misconduct.

If the Title IX Coordinator(s) or designee(s) determine that the allegations in the Formal Complaint, even if proven, would not be Title IX Sexual Harassment, the Title IX Coordinator or designee must dismiss the Formal Complaint under this Section 9 Title IX Grievance Process. The Title IX Coordinator or designee will then evaluate the Formal Complaint under Section 10 of this Procedure and other policies, procedures, and rules of the College, as warranted.

**9.2.1 Criteria for Evaluating Formal Complaints:** This Section 9 Title IX Grievance Process applies if the following conditions are met:

1. When the alleged victim filed the Formal Complaint, the alleged victim was participating in or attempting to participate in an education program or activity of the College.
2. The alleged conduct involves **all** of the following:
  - a. Sex-based
  - b. Unwelcome to the alleged victim
  - c. Involved at least one of the following:
    - i. "Quid pro quo" harassment by an employee (Section 1.1(a) of this Procedure), *or*
    - ii. Sexual assault, *or*
    - iii. Domestic violence, *or*
    - iv. Dating violence, *or*
    - v. Stalking, *or*
    - vi. "Hostile environment" harassment that satisfies **all** of the following (Section 1.1(b) of this Procedure):
      1. Severe, pervasive, and objectively offensive, **and**
      2. So severe, pervasive, and objectively offensive that a reasonable person would be denied equal access to the school's program or activity if they experienced the conduct.
  - d. Occurred in an education program or activity of the College in which the College exercised substantial control over both the alleged perpetrator (respondent) and the context of the harassment.
  - e. Occurred in the United States.

**9.2.2 Mandatory Dismissal:** The College will dismiss a Formal Complaint of Title IX Sexual Harassment and it will not be processed under Section 9 if the criteria for Title IX Sexual Harassment are not all met.

**9.2.3 Discretionary Dismissal:** The College also may dismiss a Title IX Formal Complaint for any of the following reasons:

1. **Request from Complainant.** The complainant requests dismissal in writing. In assessing such a request, the Title IX Coordinator(s) or designee(s) should consider the same factors discussed above in Section 8, “Alleged Victim’s Request Not to Investigate.”
2. **Respondent’s Employment or Enrollment Ends.** If a student-respondent withdraws or graduates from the College after a Formal Complaint has been filed but before the process has concluded, the matter must be investigated under either Section 9 or Section 10 of this Procedure and a determination of responsibility must be reached before the College can issue a transcript to the respondent. In such instances, the College shall expedite the process as necessary to accommodate both parties’ interests in a complete and speedy resolution. The following procedure will be used in situations in which the respondent leaves the College while a Formal Complaint is pending:
  - (1) If the investigation has concluded under Section 9, but the decision-maker has not issued a ruling, the matter will not be dismissed under Section 9. The hearing will proceed, and the decision-maker will issue their ruling.
  - (2) If an investigation has not yet concluded under this Section 9, the Title IX Coordinator(s) will dismiss the Formal Complaint under this Section 9. The matter will be investigated and adjudicated using the procedures in Section 10. The College may use the same investigator and rely on any investigation materials obtained or prepared under Section 9.

**Transcript Notation Rule:** If a student-respondent withdraws before the final determination, upon deciding responsibility, the College will determine if the respondent will be ineligible to reenroll for a non-academic or non-financial reason. If the respondent is ineligible to reenroll for a non-academic or non-financial reason, the College shall include on the respondent’s transcript the notation required under 19 Texas Administrative Code 3.30(b).

- (c) **Other Circumstances.** Other circumstances prevent the College from gathering evidence sufficient to decide the allegations in the Formal Complaint.

**9.2.4 Notification of Dismissal:** If the College dismisses a Formal Complaint under this Section 9, a Title IX Coordinator or designee must notify both parties in writing of the dismissal, the reasons for the dismissal, and the right to appeal the dismissal decision under Section 9.5, below.

In cases of mandatory dismissals, the College reserves the right to investigate the matter following other College policies and procedures. The Title IX Coordinator(s) or designee(s) should consider whether the process in Section 10 of this Procedure should be used to address the Formal Complaint. If the matter does not implicate Section 10 of this Procedure, the Title IX Coordinator(s) or designee(s) should notify

Student Services or Human Resources, as applicable, to determine if another policy or Code of Student Conduct should be considered.

## **9.2 Consolidation of Complaints**

The Title IX Coordinator(s) or designee(s) may consolidate Formal Complaints by one or more complainants against the same respondent or multiple respondents if the allegations of misconduct arise from the same facts or circumstances. The Title IX Coordinator(s) or designee(s) will provide notice in writing to all parties where consolidation occurs.

## **9.3 Investigation Process for a Title IX Grievance**

The following process will apply to Formal Complaints involving Title IX Sexual Harassment after the Title IX Coordinator(s) evaluation under Section 9.2.

**9.3.1** The Title IX Coordinator(s) or designee(s) will appoint one or more impartial investigators. In cases involving alleged employee-on-student or student-on-employee misconduct, the Title IX Coordinators will confer and assign the investigator(s), which may include two neutral investigators (one from the Human Resources-Employee Relations office and one from Compliance and Judicial Affairs).

In addition to the training required for all Title IX team members, the investigator must also have been trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

The Title IX Coordinator will notify the complainant(s) and respondent(s) of the name and contact information of the investigator(s). The investigator(s) shall conduct a thorough investigation in light of the allegations and the availability of witnesses.

**9.3.2** The College will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to investigate a Formal Complaint. The College has an independent duty to respond to Formal Complaints. At the College's discretion, and in consultation with the relevant police agency or Harris County District Attorney's Office, the College may temporarily delay the investigation or Grievance Process so as not to interfere with criminal justice activities. This determination will be made on a case-by-case basis and will balance the interests of the complainant, the respondent, and the College.

**9.3.3** The investigator(s) will provide reasonable written notice to a party of any investigative interview or other meetings for which the party is invited or expected to attend. The notice must include the date, time, location, participants, and purpose of the interview or meeting and must provide sufficient time for the party to prepare to participate. In most cases, 24 hours will be sufficient after the investigator provides notice of an interview or meeting for the party to prepare, but a party may request additional time if needed.

**9.3.4** During the investigation, the burdens of proof and gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the parties. However, the investigator will not collect or consider the following types of evidence:

- (a) Evidence subject to a legally recognized privilege unless the privilege was waived;

- (b) A party's medical, psychological, and similar treatment records without the party's voluntary, written consent to do so; or
- (c) Evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

The investigator(s) shall interview the complainant, the respondent, and other individuals determined by the investigator to possess relevant information. However, the investigation will continue if a party or witness declines to be interviewed or is unavailable despite repeated attempts to contact the person. No adverse inference will be drawn based solely on the nonparticipation of a party or witness.

The parties' ability to discuss the allegations under investigation or gather and present relevant evidence will not be restricted. The complainant and the respondent will be permitted to submit evidence, including inculpatory and exculpatory evidence, to the investigator(s), including documents, emails, text messages, photographs, and recordings. The complainant and the respondent each may suggest witnesses to interview, including fact and expert witnesses, and questions to ask witnesses; however, the decision whether to interview and what questions to ask is a matter of professional judgment for the investigator(s) in light of the allegations and the availability of the witnesses or evidence. The investigator(s) will prepare a typed summary of or notes from each witness's interview to be included in the investigation record.

**9.3.5** Barring unusual circumstances (*e.g.*, multiple reporting parties and witnesses or the complaint is filed immediately before winter break), the investigation ordinarily will be completed within 60 to 90 calendar days.

**9.3.6** Before completing the investigation report, the investigator will provide the parties with access to any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint so that each party can meaningfully respond to the evidence before the conclusion of the investigation. All directly related evidence must be provided, including inculpatory and exculpatory evidence, whether obtained from a party or other source, even if the College does not intend to rely on the evidence to reach a determination regarding responsibility. The directly related evidence shall be transmitted to the parties (and their advisors if authorized by the parties) in an electronic format or in a hard copy. Both parties will have ten calendar days to inspect, review, and respond to the evidence. Extensions of time may be granted for good cause, in which case both parties will be entitled to the same extension. A party must submit a request for an extension of time to the investigator before the deadline the party seeks to extend.

A party must submit all responses to the evidence in writing to the investigator within the required timeframe. Upon receipt, the investigator will promptly provide each party's response to the directly related evidence to each other party.

**9.3.7** The investigator shall consider the parties' submissions, if any, in response to the directly related evidence before completing the investigation report. The completed investigation report will outline the misconduct allegations, provide a procedural history detailing the steps taken to conduct the investigation, and fairly summarize the relevant evidence, including witness statements.

The investigator will provide a completed investigation report to the Title IX Coordinator and concurrently to each party (and to each party's advisor, if any, if the party has provided consent for disclosure to the advisor). The investigator or the Title IX Coordinator or designee must provide the completed investigation report to the parties at least ten calendar days before the hearing date under Section 9.4.

## **9.4 Hearing Process for a Title IX Grievance**

The following process will apply to Formal Complaints involving Sexual Misconduct after completing and delivering the investigator's report under Section 9.3.8.

**9.4.1 Title IX Hearing Board:** The Title IX Coordinator(s) will appoint a three-person Hearing Board composed of at least one full-time faculty member and one professional staff member to adjudicate the Formal Complaint. The third member may be a faculty member or professional staff member. Employees who were witnesses to the incident under review, employees involved in the investigation or evaluation of the charges under review, and the Title IX Coordinator may not serve on a Hearing Board. One Board member shall serve as the chairperson.

In addition to the training required for all Title IX team members, all Board members must receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

**9.4.2 Written Notice of the Hearing:** The Title IX Coordinator(s) or designee(s) will provide at least ten calendar days written notice to parties (and to a party's advisor when authorized by that party) of the hearing date. The notice will provide the date, time, location, and the names and titles of the Hearing Board members and others who will be present. The notice shall contain a statement of the alleged conduct charges, identify the purpose of the hearing (to determine responsibility for the alleged conduct), state that the respondent is presumed not responsible, and that a determination regarding responsibility will be made at the end of the hearing based on a preponderance of the evidence, and identify the range of sanctions available should the respondent be found responsible. The notice shall state that each party may have an advisor of their choice at the hearing and that, if the party does not have an advisor, the College will provide an advisor at no charge. The notice shall state that advisors' participation during the hearing is limited to asking questions of the other party or witnesses unless otherwise determined by the hearing officers and that the parties must notify the Titles IX Coordinator(s) or their designee(s) of the names and contact information for any advisor who will attend the hearing at least five calendar days before the hearing.

**9.4.3 Challenges to the Hearing Board:** Either party may challenge the impartiality or objectivity of members of the Hearing Board. A challenge must be submitted in writing to the chairperson of the Hearing Board within three calendar days after notice of the identity of the Hearing Board members. The challenge must state the reasons for the challenge. The chairperson will be the sole judge of whether any member can serve impartially and objectively. If a Board member elects recusal, the Title IX Coordinator(s) or their designee(s) will assign a replacement Board member.

**9.4.4 Access to Evidence.** Each party will have access to all directly related evidence from the investigation, responses to the directly related evidence, the completed investigation report, and responses to the investigation report at the hearing.

**9.4.5 Separate Rooms and Virtual Participation.** At the request of either party or in the discretion of the Title IX Coordinator(s), their designee(s), or the Hearing Board chairperson, the College will arrange a hearing with the parties located in separate rooms with technology enabling the Hearing Board and parties to see and hear the participants answering questions simultaneously. Participants may appear at the hearing virtually and are not required to be physically present at the same physical location of the hearing.

**9.4.6 Conducting the Hearing.** The hearing will be conducted as an administrative hearing. Courtroom rules of evidence and civil procedure will not apply. Evidence, however, must be relevant and of the type that would be accepted by reasonable persons in the conduct of their important affairs. Board members may give evidence less weight based on its reliability.

Objections shall be directed to the hearing board. The hearing board will rule on procedural matters and objections regarding testimony and exhibits.

Hearings are closed to members of the public.

The hearing will be recorded in audio or audiovisual format and may be transcribed at the discretion of the College. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

Each party may make an opening statement and closing argument. Opening statements ordinarily shall be limited to ten minutes per side. The chairperson shall determine the number of minutes that the parties will be given for the closing arguments, taking into consideration the complexity of the case. Each party will receive the same amount of time for opening statements and closing arguments. Neither party may present new evidence during closing arguments.

Hearing Board members may ask questions during the hearing of any party or witness. Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge credibility.

Each advisor has the ability to ask questions directly, orally, and in real time at the hearing. The parties themselves may not ask questions of the other party or any witnesses; all questions must be asked by an advisor for the party. Advisors shall ask questions as follows:

- The advisor will ask a question of the other party or a witness.
- Before the question is answered, the chairperson will rule whether the advisor's question is relevant to the alleged conduct charges.
- If the chairperson finds that the proposed question is irrelevant, the chairperson must explain the decision to exclude the question.
- If the chairperson allows the question, the party or witness should answer the question.

A party or witness may decline to submit to cross-examination or answer specific questions at the hearing. When deciding responsibility, the Hearing Board may consider statements made by the parties and witnesses at the hearing, during the investigation (such as a signed witness statement), or during conversations between the parties, such as text messages, regardless of whether the party or witness submits to cross-examination or answers specific questions about those statements at the hearing. The Hearing Board may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions but may consider refusal to participate or answer questions in conjunction with other evidence. The Hearing Board must carefully weigh all relevant evidence.

**9.4.7 Irrelevant Evidence:** When assessing the relevance of questions during the hearing, conducting the hearing, and evaluating the evidence for purposes of reaching a determination, the Hearing Board must consider the following evidentiary limitations:

- Questions and evidence about a complainant’s prior sexual behavior are irrelevant unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
- Title IX protects the privacy of a party’s medical, psychological, and similar treatment records, meaning the College cannot access or use such records unless the College obtains the party’s voluntary, written consent to do so.
- The College’s grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.
- The Hearing Board will not make credibility determinations based on a person’s status as a complainant, respondent, witness, student, or employee.

The hearing board may seek legal advice from an attorney as appropriate during the hearing on any of these or other evidentiary questions, even if such would require a recess in the hearing.

**9.4.8 Remedies, Disciplinary Action, and Sanctions:** Remedies must be designed to restore or preserve equal access to the College’s education program or activity.

If the respondent is a student, available sanctions are outlined in Section C, Disciplinary Sanctions and Remedies, of the Student Conduct Process found in the Code of Student Conduct. Remedies may include counseling or training; imposition of continuing restrictions on access to a location or program; suspension of rights or privileges; suspension or expulsion; and other disciplinary action, sanctions, or remedies appropriate to the circumstances and as informed by the evidence.

If the respondent is an employee, possible disciplinary action or remedies may include counseling or training; reprimand; job demotion or reassignment; suspension; nonrenewal; termination; and other sanctions or remedies appropriate to the circumstances and as informed by the evidence. If the respondent is a third party, possible sanctions include restrictions on access to a location or program or a ban on visiting San Jacinto College campuses or property.

**9.4.9 Hearing Board Determination:** The Hearing Board shall prepare a written determination within 15 working days of the close of the evidence. The Hearing Board will engage in an objective evaluation of all relevant evidence. Reviewing all relevant evidence means considering evidence whether it tends to establish guilt or whether it tends to disprove guilt.

The written determination must contain the following information: (A) identification of the allegations at issue; (B) a description of the procedural steps leading to the hearing, beginning with the date of the filing of the Formal Complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; (C) the findings of fact supporting the Hearing Board’s determination based on a preponderance of the evidence; (D) conclusion(s) and a rationale as to whether the respondent is responsible for each incident of alleged misconduct based on the College’s policies, procedures, or codes of student conduct; (E) the discipline or sanctions, if applicable; (F) the remedies, if applicable, designed to restore the complainant’s access to the education program or activity; and (G) the College’s appeal procedure and permissible bases for a party to appeal.

The chairperson or other member of the Hearing Board will transmit a copy of the determination concurrently to the Title IX Coordinator and the parties (and to a party's advisor when authorized by that party).

If the respondent is an employee, the Hearing Board will transmit a copy of the determination to the Title IX Coordinator for employees and the employee's respective director, dean, or next level leader who has not been involved in the underlying dispute. If the Hearing Board has proposed termination, nonrenewal, or suspension, the Hearing Board shall transmit the determination to the Chancellor.

If the respondent is a third party, the Hearing Board will transmit a copy of the determination to the Vice Chancellor of Fiscal Affairs.

## **9.5 Appeal Process for a Title IX Grievance**

This process will be used when any party appeals a dismissal under Section 9.2 of this Procedure or a final determination under Section 9.4 of this procedure.

**9.5.1 Right to Appeal:** Either party may appeal a dismissal under Section 9.2 of this Procedure or a final determination under Section 9.4 of this Procedure within seven calendar days of notification of such a determination on the following bases: (1) A procedural irregularity affected the outcome of the matter; (2) New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or (3) A conflict of interest or bias for or against a party by the Title IX Coordinator or one or more investigators or hearing officers that affected the outcome of the case.

**9.5.2 Appeal Submission Process:** Appeals must be submitted in writing to a Title IX Coordinator by the deadline and explain the party's reason(s) for challenging the decision. A party who alleges that a conflict of interest or bias affected or is likely to affect the grievance process shall identify the factual basis of the allegation. Conflicts and bias may be general (for example, the employee allegedly demonstrates favoritism based on the status of a party as a complainant or respondent) or specific to the case (for example, the employee has a prior connection to a specific party because they participate in an organization together).

**9.5.3 Assignment of Appellate Officer:** Upon receiving the appeal, the appropriate Title IX Coordinator(s) or designee(s) will assign an appellate decision-maker for the appeal.

When an appeal involves two students, the Title IX Coordinator for students will assign an impartial appellate officer to determine the outcome of the appeal.

When an appeal involves a student and an employee, the Title IX Coordinator(s) or their designee(s) will work together to identify an appropriate appellate decision-maker.

In a case in which the respondent is an employee and the Hearing Board has found the employee responsible for a violation, the appeal shall be heard by a member of the Strategic Leadership (SLT) who was not involved in the underlying investigation or hearing. If the respondent is a member of the SLT, the Chancellor shall identify to the Title IX Coordinators or their designees an appropriate appellate decision-maker, who may be a College administrator, external consultant, or attorney who was not involved in the underlying investigation or hearing.

**9.5.4 Notice of Appeal:** Both parties will be notified in writing when an appeal is filed. The notice will identify and provide contact information for the appellate decision-maker and explain that appeal procedures will apply equally for both parties.

**9.5.5 Appeal Response:** After receiving notice of an appeal, the other party (or the College) will have seven calendar days to submit a written statement responding to the appeal to the appellate decision-maker. Upon receipt, the appellate decision-maker will provide a copy of the written statement to the other parties. Each party will then have three calendar days to provide final arguments for or against the appeal in writing to the appellate decision-maker.

**9.5.6 Appeal Determination:** The appellate decision-maker will prepare a written decision within 30 calendar days from receipt of the appeal, addressing the grounds stated in the appeal and providing a rationale for the ruling. The appellate officer may submit written questions to the parties if necessary to decide the appeal but must provide the questions to each party simultaneously and provide each party the same time to respond.

**9.5.7 Notice of Determination:** The appellate officer will simultaneously provide a copy of the ruling to the parties and the Title IX Coordinator.

#### **9.5.8 Post-Appeal Process for Certain Employee Respondents**

If the respondent is a faculty member and disagrees with the disposition of the appeal by the appellate officer and the appeal involves a nonrenewal or termination, the respondent-faculty member may seek review by the Chancellor by filing an appeal as follows: appeals relating to proposed terminations shall be filed following Procedure 4-23: Termination or Demotion of Contractual Employees and appeals relating to proposed nonrenewals shall be filed under Procedure IV.4002.D.a on Nonrenewals. The student complainant will be entitled to a copy of the appeal and may submit a written response within seven working days of receiving notice of the appeal. The student complainant shall be permitted to attend and participate in any meeting between the Chancellor and the respondent-faculty member regarding the appeal.

If the respondent is a staff member or administrator under contract, appeals relating to proposed terminations shall be filed under Procedure 4-23: Termination or Demotion of Contractual Employees. The student complainant will be entitled to a copy of the appeal and may submit a written response within seven working days of receiving notice of the appeal. The student complainant shall be permitted to attend and participate in any meeting between the Chancellor and the respondent-faculty member regarding the appeal.

### **10. Grievance Process for “Other Inappropriate Conduct”**

Section 10 describes the process to investigate and adjudicate Formal Complaints of “Other Inappropriate Conduct” (defined in Section 1.2 of this Procedure). As stated in Section 2, a Formal Complaint is a written, signed document asking the College to investigate and adjudicate allegations of Sexual Misconduct. “Other Inappropriate Conduct” is sexual misconduct that does not satisfy the definition of “Title IX Sexual Harassment.”

**10.1 Oral Reports and Allegations.** From time to time, an employee will observe or receive information regarding an alleged incident that the employee reasonably believes constitutes Other Inappropriate Conduct. As stated in Section 3 above, except in limited situations, the employee must promptly report the known information to one of the College’s Title IX Coordinators.

If conduct is observed or reported does not involve Title IX Sexual Harassment and the alleged victim does not want to submit a Formal Complaint of “Other Inappropriate Conduct” requesting an

investigation, the College nonetheless may desire to address the conduct by gathering facts and, if appropriate, counseling or disciplining the alleged offender or taking other remedial action. The College may investigate the matter and impose sanctions in accordance with the Code of Student Conduct or Human Resources procedures, as may be applicable, in the following circumstances:

- (i) The alleged victim has declined to file a complaint but has agreed to disclosure of the alleged victim's name; or
- (ii) The alleged victim has declined to file a complaint and does not agree to disclosure of the alleged victim's name, but it is possible to investigate and/or take remedial action without disclosing the name of the alleged victim (for example, investigating whether a faculty member made in class in the presence of multiple witnesses).
- (iii) The alleged victim has declined to file a complaint and does not agree to disclosure of the alleged victim's name, but the Title IX Coordinator has determined, as stated in Section 8 of this Procedure, that an investigation is necessary due to broader concerns about public safety.

As stated in Section 8, the College will notify the alleged victim if the College decides to investigate an incident in the absence of a Formal Complaint of "Other Inappropriate Conduct" by the alleged victim. The notice will indicate whether the matter will be reviewed under the Code of Student Conduct or Human Resources procedures.

## **10.2 Formal Complaints involving "Other Inappropriate Conduct"**

The Title IX Coordinator(s) or designee(s) will evaluate whether a Formal Complaint describes "Title IX Sexual Harassment, "Other Inappropriate Conduct," or both. If the Formal Complaint involves Other Inappropriate Conduct but does not involve Title IX Sexual Harassment, an investigation will be initiated under Section 10 of this Procedure if the complaint articulates specific facts, which if determined to be true, would support a finding that this Procedure, the Code of Student Conduct, or other College policy was violated.

The College may decline to process a complaint under a variety of circumstances, including:

- the complaint does not describe conduct covered by this Procedure, Code of Student Conduct, or other College policy;
- the complainant declines to cooperate in the College's investigation; or
- the complaint has been withdrawn or the requested remedy has already been implemented or was offered and rejected.

If the College declines to process a complaint pursuant to this procedure, the Title IX Coordinator(s) or designee(s) shall send the complainant a written notice explaining the reason(s). The Title IX Coordinator(s) or designee(s) should consider whether the alleged conduct implicates other College policies or procedures and, if so, forward the matter to the appropriate department.

If the College initiates an investigation, the Title IX Coordinator(s) or designee(s) shall notify both parties in writing of the allegations and inform them of their right to submit a written response to the allegations within five calendar days, unless unusual circumstances warrant additional time. The written notice shall inform the parties that retaliation against the other party is prohibited and may result in disciplinary action. Additionally, the Title IX Coordinator, in consultation with Judicial Affairs and/or Human Resources, shall evaluate whether additional interim action is needed, such as an emergency removal/employee leave or mutual no-contact order.

### **10.2.1 Claims against Student Respondents**

The Title IX Coordinator(s) or designee(s) will assign an impartial investigator from the Compliance and Judicial Affairs Office to promptly investigate the allegations in the Formal Complaint of “Other Inappropriate Conduct” using the Student Handbook process. In student discipline cases involving “sexual harassment” as defined under Texas law, the College must ensure that the students have reasonable and equitable access to all evidence relevant to the alleged violation in the institution’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.

### **10.2.2 Claims against Employee Respondents**

The Title IX Coordinator(s) or designee(s) will assign an impartial investigator to investigate the misconduct under Human Resources Procedure 1-2.

The investigator will promptly investigate the allegations in the Formal Complaint. The investigator will prepare a written investigation report with findings of fact and a preliminary determination regarding responsibility. The report will identify the provision(s) of any policies, procedures, or rules that allegedly were violated. The investigator will consider the totality of circumstances, including the context and duration of the conduct and its severity. The completed investigation report and preliminary determination regarding responsibility will be submitted in writing to both Title IX Coordinators, the employee-respondent, the student complainant, and the employee’s appropriate director, dean, or next level leader who has not been involved in the underlying dispute.

The employee’s appropriate leader will review the investigation report and investigation record and respond in accordance with applicable College policies and procedures.

If the proposed discipline is termination, then the proposal shall be submitted to the Chancellor or Chancellor’s designee for approval. The procedures in Policy IV-G-1 shall be followed for contract employees, and Policy IV-G-2 shall be followed for non-contract employees. If the proposed discipline is not termination, the respondent may seek review of the decision pursuant to Policy IV-I, the Concerns and Grievance Policy. The grievance shall be based on the investigation record developed under this Procedure, and the grievance shall be heard by a member of the Strategic Leadership Team who was not involved in the underlying dispute. A respondent may contest a finding of misconduct, the discipline, or both.

### **10.2.3 Claims against Third Party Respondents**

The term “third party respondent” applies to persons who are not employees, students, or trustees of San Jacinto College. This term includes campus visitors, visiting athletes and students from other schools, and vendors providing service on campus. The term includes individuals who provide off-site instructional experiences for students at organizations with whom the College has a contractual relationship or memorandum of understanding (such as hospitals providing clinical experiences for students in a health profession). If the respondent works for an organization with whom the College conducts business, the Title IX Coordinators will determine if a contract or memorandum of understanding provides procedures for notifying the organization and addressing the complaint against the respondent. The College will comply with applicable contract procedures, including procedures pertaining to available remedies and required notifications.

The Title IX Coordinators for students and employees, as needed, will jointly confer to assign an impartial investigator to investigate the allegation. The investigator will promptly investigate the

allegations in the Formal Complaint. The investigator will prepare a written investigation report with findings of fact and a preliminary determination regarding responsibility. The report will identify the provision(s) of the policy, procedure, or other applicable rules that allegedly were violated. The investigator will consider the totality of the circumstances, including the context and duration of the conduct and its severity. The completed investigation report and preliminary determination regarding responsibility will be submitted to a Provost or another designee who has not served as a witness, investigator, or decision-maker in the matter.

Within ten working days of receipt of the report and record, the decision-maker will prepare a written determination and determine an appropriate sanction as may be warranted. The decision-maker's disposition shall be communicated in writing to the parties and one or both Title IX Coordinators. If the respondent works for an organization with whom the College conducts business, the College shall follow any applicable procedures for notifying the organization.

A third-party respondent may appeal a finding of misconduct, the sanction, or both. Appeals must be filed in writing to one or both of the Title IX Coordinators within seven working days of notification of such a determination and may be based only on the following bases: (1) A procedural irregularity affected the outcome of the matter; (2) New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or (3) the Title IX Coordinator, the investigator(s), or appropriate leader had a conflict of interest or bias for or against the parties (generally or specifically in this matter) that affected the outcome of the case. Both parties will be notified in writing when an appeal is filed.

Appeals shall be heard by a member of the Strategic Leadership Team who was not involved in the underlying dispute. Each non-appealing party and the College has seven working days from notification of an appeal to submit a written statement supporting or challenging the appeal to the appellate officer. The appellate officer will prepare a written decision within 30 calendar days from the date of receipt of the last timely written statement in support of or challenging the appeal. The written appeal decision will give a rationale for the ruling. The appellate officer will simultaneously provide a copy to the parties and the appropriate Title IX Coordinator. If the respondent works for an organization with whom the College conducts business, the College shall follow any applicable procedures for notifying the organization.

## **11. Other Rules and Additional Conduct Violations**

### **11.1 False Information and False Complaints**

Any person who in bad faith knowingly files a false complaint under this Procedure or provides materially false information is subject to disciplinary action up to and including dismissal or separation from San Jacinto College. A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not establish the falsity of a report, Formal Complaint, or evidence. Similarly, determining that a Respondent is responsible for a policy violation does not imply that a Respondent's statements disclaiming responsibility were false.

### **11.2 Interference with the Grievance Process**

Any person who interferes with the Grievance Process (outlined in Section 9 of this Procedure) is subject to disciplinary action up to and including dismissal or separation from the College. Actions that constitute interference with a Grievance Process include, but are not limited to:

- (a) Attempting to coerce, compel, or prevent an individual from providing testimony or evidence;

(b) Removing, destroying, or altering documentation relevant to the Grievance Process; or

(c) Knowingly providing false or misleading information to a Title IX Coordinator, investigator, hearing officer, or appeal officer, or encouraging others to do so.

### **11.3 Calculating Deadlines under this Procedure**

When a deadline is stated in terms of “calendar” days and the deadline falls on a weekend or state or federal holiday, the deadline shall be moved to the next day that does not fall on a weekend or a holiday.

When a deadline is stated in terms of “working” days, the deadline shall be calculated based on the days that the College is open for business (whether in person or virtually). The term “working days” excludes spring break and winter break.

### **11.4 Accessibility Services Requests**

A student or employee who is a qualified person with a disability under federal law and needs assistance complying with this Procedure may contact the appropriate Title IX Coordinator for assistance.

### **11.5 No Effect on Pending Personnel or Academic Actions Unrelated to the Formal Complaint**

The filing of a Formal Complaint will not prevent or delay any action unrelated to the Formal Complaint, including: (1) any evaluation or disciplinary action relating to a student or employee with an unsatisfactory performance or who has violated other College rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a College employee.

### **11.6 Timeframe for Completion of Grievance Process**

The Grievance Process will be completed within 150 calendar days from the filing of the Formal Complaint. This timeline assumes that the investigation phase may take approximately 90 calendar days and that the hearing and appeal phase may take approximately 60 calendar days. The College may extend these timeframes for good cause and with written notice to the parties of the delay, the reason for the delay, and the length of the extension of time. Good cause may include but is not limited to illness of a party or the party’s advisor, or the investigator; concurrent law enforcement proceedings; witness unavailability; a public health emergency; or the need to arrange for language assistance or technology or disability-related accommodations.

### **11.7 Grievance Process Document Retention**

The College shall retain for seven years all documentation related to a Grievance Process, including documents relating to the investigation, hearing, and any appeal.

## 12. Glossary of Terms in this Procedure<sup>1</sup>

**Complainant:** The individual alleged to be the victim of any prohibited conduct under this Procedure and has filed a Formal Complaint. Before a Formal Complaint has been signed, this person is referred to as the “alleged victim” in this Procedure.

**Confidential Employees:** Confidential Employees include counselors in Counseling and Psychological Services or a health care provider in Health Services. Additionally, employees who receive information regarding an incident of Sexual Misconduct or Other Inappropriate Conduct under circumstances that render the employee’s communications confidential or privileged under other law (such as attorneys) also are considered Confidential Employees.

**Confidential Resources:** Confidential Resources include individuals in the community such as clergy, external mental health providers, and external medical providers.

**Consent:** Consent is a clear, knowing, and voluntary permission by words or action to engage in mutually agreed upon sexual activity. Consent is communicated through mutually understandable words or actions that indicate willingness by all the involved parties to engage in the same sexual activity at the same time and in the same way. A current or previous dating or sexual relationship by itself is not sufficient to establish consent. Additionally, consent can be withdrawn at any time. Ideally, consent is given verbally; however, consent (or lack of consent) also may be expressed through gestures and body language.

Consent is not effective if it results from: (a) the use of physical force or restraint; (b) a threat of physical force; (c) acts of intimidation; (d) acts of coercion; (e) incapacitation (including through the voluntary or involuntary ingestion of alcohol or controlled substances); or (f) other evidence that shows that the individual’s ability to exercise their own free will was eliminated on the occasion in question. Specific examples of those who cannot give consent include but are not limited to:

1. The individual is under the age of 17 and is not the spouse of the actor;
2. The individual is unconscious or asleep;
3. The individual has not consented to the sexual act with the actor and the actor knows the other person is unaware that the sexual act is occurring;
4. The individual is mentally impaired or has a mental disability; or
5. The actor has misrepresented or concealed their true identity to the individual.<sup>2</sup>

**Dating Violence:** “Dating violence” means violence committed by the actor against a person with whom the actor is or has been in a social relationship of a romantic or intimate nature. The existence of the relationship shall be determined based on the alleged victim’s statement about the relationship with consideration of the following factors: (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between persons involved in the relationship.<sup>3</sup> Dating

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<sup>1</sup> The definitions in the text of this Procedure will govern the processing of reports and complaints under this Procedure. The definitions largely track definitions found in Title IX regulations and under the Clery Act. However, in certain instances, particularly those involving criminal prosecution, definitions under Texas law may be informative. Therefore, this procedure cross references certain Texas laws as may be appropriate.

<sup>2</sup> “Consent” under Texas law with respect to sexual assault is defined in Section 22.011(b) of the Texas Penal Code.

<sup>3</sup> See 34 U.S.C. § 12291(a)(10); 34 C.F.R. § 106.30(a).

violence includes but is not limited to sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**Domestic Violence:** “Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse, a current or past intimate partner, a person that the victim shares a child with, or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Texas. In Texas, a person commits domestic violence if he or she engages in violence against a family member, household member, or a current or past partner with whom the alleged perpetrator had a continuing relationship of a romantic or intimate nature.

**Education Program or Activity:** Refers to places, programs, events, and circumstances over which the College exercises substantial control over the alleged perpetrator and the context in which the sexual harassment occurred. The phrase also applies to any building owned or controlled by a student organization officially recognized by the College. The phrase “education program or activity” applies whether the program is on-campus or off-campus and whether the property is leased or owned by the College. The phrase applies to extracurricular activities sponsored by the College and activities that occur as part of the instructional program, such as a clinical program at a hospital. The relevant question is whether the College exercised substantial control over the alleged perpetrator and the context of the objectionable conduct.

**Formal Complaint:** A Formal Complaint is a written, signed document asking the College to investigate and adjudicate allegations of Sexual Misconduct. A Formal Complaint may be delivered in person or submitted by mail, electronic mail, or via the College’s online incident portal ([Reporting Sexual Misconduct Form](#)).

**Grievance Process:** The process by which Formal Complaints under this Procedure are investigated and adjudicated under Sections 9 and 10.

**Other Inappropriate Conduct:** “Other Inappropriate Misconduct” is an umbrella term that refers to sexual conduct that does not satisfy the definition of “Title IX Sexual Harassment” but that is nonetheless inappropriate in a collegiate environment. Conduct violates the College’s Sexual Misconduct Policy if it occurs on campus or within an education program or activity of the College or if it occurs off-campus but adversely impacts the College’s education programs and activities or interferes with a person’s ability to participate in or benefit from the College’s education programs and activities. The conduct violates College policy if it is objectively offensive to a reasonable person and the affected individual perceived the conduct as harassing or abusive. “Other Inappropriate Misconduct” includes, but is not limited to, the following prohibited conduct:

- 1.2.1 “Sexual harassment” as defined under the Texas Education Code, sec. 51.251(5). This statute prohibits unwelcome, sex-based verbal or physical conduct that: (A) in the employment context, unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment; or (B) in the education context, is sufficiently severe, persistent, or pervasive and interferes with a student’s ability to participate in or benefit from educational programs or activities at the College.
- 1.2.2 Unwelcome sex-based advances or propositions; unwelcome requests for sexual favors; unwelcome physical contact or touching of a sexual nature; persistent and unwanted sexual attention; voyeurism; unwelcome sexual gestures; public exposure of one’s sexual organs on campus or at an event under the control of the College; displaying obscene materials in a public place on campus; forwarding pornographic or obscene material via email or text to non-consenting recipients; recording or photographing sexual activity or a person’s

genital area or breast area or from a vantage point that a reasonable person would view as an invasion of personal privacy; and allowing a third party to view consensual sex without the knowledge of the other participant.

**1.2.3** Unwelcome comments of a sexual nature that a reasonable person would view as gratuitous, intimidating, offensive, and/or degrading and that adversely impacts an individual's educational environment. The College's definitions are not intended to restrict constitutionally protected speech. In the academic context, including the context of a classroom discussion or preparation of a course assignment, a relevant factor is whether the comments are reasonably related to course content or serve a legitimate pedagogical function.

**1.2.4** Conduct of a sexual nature that is consensual between two or more parties but is nonetheless inappropriate in an educational environment, such as engaging in consensual sexual acts in a campus building or displaying sexually oriented objects or materials in the presence of third parties while on campus.

**Parties:** The term "parties" refers to the "Complainant" and the "Respondent" under this Procedure.

**Preponderance of the Evidence:** The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of Prohibited Conduct under this Procedure. This standard is satisfied if the action is deemed more likely to have occurred than not.

**Retaliation:** No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Procedure or related policy or law or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this Procedure. The definition of retaliation also applies to acts of intimidation, threats, coercion, or discrimination, including a charge against an individual for code of conduct violations that do not involve sexual discrimination or Sexual Misconduct but that arise out of the same facts or circumstances as a report or complaint of sexual discrimination or Sexual Misconduct when the purpose of the charge is to interfere with a right or privilege secured by this Procedure or related policy or law. The following acts are not retaliation:

- Investigating or imposing consequences against a party or witness for knowingly making false statements or knowingly submitting false information concerning a report, complaint, investigation, proceeding, or hearing under this Procedure.
- Charging an individual with one or more code of conduct violations that do not involve sexual discrimination or Sexual Misconduct but that arise out of the same facts or circumstances as a report or complaint of sexual discrimination or Sexual Misconduct or a report or formal complaint of Sexual Misconduct for a purpose that is not related to interfering with any right or privilege secured by this Procedure or related policy or law.
- Petty slights and annoyances.

**Respondent:** An individual reported to be the perpetrator of Prohibited Conduct under this procedure where a Formal Complaint has been signed. Before a Formal Complaint has been signed, this person is referred to as the "alleged perpetrator" in this Procedure.

**Sexual Assault:** "Sexual assault" includes forcible and nonforcible sex offenses as defined under the uniform crime reporting system of the Federal Bureau of Investigation. Forcible sex offenses are any sexual act directed against another person, without the consent of the victim, including instances where the

victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and fondling. Nonforcible sex offenses include incest and statutory rape.

- 1) 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 victim's consent.
- 2) Fondling - The touching of the private body parts of another person for sexual gratification, without the victim's consent, including instances where the victim is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.
- 3) Incest - Sexual intercourse between persons related to each other within the degrees wherein marriage is prohibited by law.
- 4) Statutory Rape - Sexual intercourse with a person under the statutory age of consent.

**Sexual Misconduct:** This term encompasses Title IX Sexual Harassment and Other Inappropriate Conduct.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: 1) fear for the person's safety or the safety of others; or 2) suffer substantial emotional distress. For this definition:

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Supportive Measures:** Non-disciplinary, non-punitive, individualized services offered when appropriate and reasonably available without fee or charge to an alleged victim of Sexual Misconduct and, if a Formal Complaint has been filed, to a Respondent in connection with a report or Formal Complaint of Sexual Misconduct. Supportive Measures are sometimes referred to as supportive services, protective measures, interim measures, or accommodations. They are available to alleged victims of Sexual Misconduct before, during, and after the filing of a Formal Complaint and even if no Formal Complaint has been filed.

Supportive Measures are designed to restore or preserve access to the College's education program or activity without unreasonably burdening the other party; protect the safety of all parties and the educational environment; and deter sexual harassment and other sexual misconduct. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Under state law and College Policy, alleged victims and perpetrators may drop a course in which both parties are enrolled without academic penalty.

Measures that are punitive or disciplinary cannot be Supportive Measures and cannot be implemented until after the conclusion of a grievance process (see Sections 9 and 10). Emergency Removals and Administrative Leaves are neither disciplinary nor Supportive Measures (see Section 6.3). However, Supportive Measures can lead to some burden on a party, as long as that burden is not unreasonable.

**“Sexual Harassment” Covered by Title IX:** As stated in Title IX regulations (34 C.F.R. section 106.30), sexual harassment under the Section 9 Title IX Grievance Process is conduct based on sex that satisfies one or more of the following:

- a) *Quid pro quo* harassment occurs when an employee of the College conditions the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct;
- b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College’s education program or activity; or
- c) “Sexual assault,” “dating violence,” “domestic violence,” or “stalking” as defined in this procedure.

Subsections (a) and (c) above are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access because such conduct is sufficiently serious to deprive a person of equal access. Therefore, any instance of quid pro quo sexual harassment, sexual assault, dating violence, domestic violence, or stalking is “sexual harassment” covered by Title IX.

The term “sexual harassment” also is defined in the Texas Education Code, sec. 51.251(5); however, that definition is different from the definition under Title IX regulations. In this Procedure, “Other Inappropriate Conduct” includes sexual harassment as defined in the Texas Education Code, sec. 51.251(5).

Date of SLT Approval	November 9, 2022
Effective Date	December 12, 2022
Associated Policy	Policy III.3006.D, Sexual Misconduct
Primary Owner of Policy Associated with the Procedure	Deputy Chancellor & President Vice Chancellor, Human Resources, Organizational and Talent Effectiveness
Secondary Owner of Policy Associated with the Procedure	Associate Vice Chancellor, Student Services Vice President, Human Resources