

# TEXAS STATE

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

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

education. Constitutionally protected expression cannot be considered Sexual Misconduct under this Policy.

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

## **2. Definitions**

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

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

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

- 3.2.1. Presumption of Non-Responsibility. Any person accused of Sexual Misconduct under this Policy is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 3.2.2. Preponderance of the Evidence Standard. The Decision Maker will weigh the admissible evidence using the preponderance of the evidence standard.
- 3.3. Conflicts of Interest. Any individual designated by a Component as a Title IX Coordinator, Investigator, Decision Maker, Informal Resolution Facilitator, Appellate Author





3.8.6. Supportive Measures when Anonymity is Required. The

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

3.9.2.1.3. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and,

3.9.2.1.4. informal resolution at any time prior to reaching an agreement, and resume the grievance process.

3.9.2.2. Scheduling. When a Sexual Misconduct Complaint or Report meets the requirements for informal resolution, the Title IX Coordinator will make the requisite arrangements. Informal resolution may take place at any point in the grievance process after a Formal Complaint is filed and any time prior to reaching a determination regarding responsibility.

3.9.2.3. Referral for Investigation. The Title IX Coordinator will terminate informal resolution and continue the investigation if:

3.9.2.3.1. The Parties are not able to reach an agreement prior to the exhaustion of the administrative process,

3.9.2.3.2. One or more of the Parties withdraws consent to informal resolution, or,

3.9.2.3.3. Title IX Coordinator determines that informal resolution is no longer appropriate.

3.9.2.4. Agreements. Informal resolutions will be reduced to writing, and signed by both Parties. Agreements will be maintained by the Title IX Coordinator and disclosed only as necessary to implement the provisions of the agreed resolution or as required by law.







3.12.2.9. recommendation to revoke tenure.

3.13. Notification of Finding to Postsecondary Institutions. On request by another postsecondary educational institution, a Component shall provide to the requesting institution information relating to a determination by the Component that a student enrolled at the Component violated this Policy.

3.14. Retaliation. No Component or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a Complaint or Report, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Any person, who believes that she or he has been subjected to Retaliation, should immediately report this concern to the Title IX Coordinator.

3.14.1. By the Component

3.14.1.1. A Component may not discipline or discriminate against an employee who in good faith makes a Report of Sexual Misconduct as required by this Policy.

3.14.1.2. Subsection 3.14.1.1 does not apply to an employee who perpetrates or assists in perpetrating an incident of Sexual/F1 14.04 Tf1 0 0 1 238.49







alleged offense anonymously; and

4.2.7.2. be easily accessible through a clearly

website home page. (For more information on anonymity, see Section 4.2.8 and Section 4.8.)

4.2.8. Anonymous Reports. Individuals who chose to file anonymous reports are advised that:

4.2.8.1. it may be very difficult, and in some cases, not possible for the Component to investigate an anonymous Report; and

4.2.8.2. filing a Report is not necessary in order to secure Supportive Measures through the Component.

4.3. Preservation of Evidence. Preservation of evidence is critical in incidents of Sexual Misconduct. If you experience sexual violence, you are encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within 4 days of the incident. With

medical exam can be used in a criminal investigation; however, a

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







Harassment process.

5.4.1. If a Formal Complaint is dismissed for failing to meet the requirements in Section 5.2, a Component may address such Non-Title IX Sexual Misconduct through the Non-Title IX Sexual Misconduct provisions of this Policy.

5.4.2. If the allegation does not meet the definition of Sexual Misconduct, the Component may address the misconduct through the applicable code of conduct process.

5.5. Permissive Dismissal of Formal Complaint and/or Transfer to Alternative Disciplinary Process.

5.5.1. A Component may, but is not required to, dismiss a Formal Complaint or any allegations therein, if at any time during the Title IX Sexual Harassment investigation or live hearing:

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

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

6.3. Non-Title IX Sexual Misconduct. Sexual Misconduct that does not meet the definition of Title IX Sexual Harassment shall be classified as Non-Title IX Sexual Misconduct. Non-Title IX Sexual Misconduct may be handled by the Title \_\_\_\_\_ individual(s) the Component determines appropriate to address such Non-Title IX Sexual Misconduct.

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

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





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

- 7.7.4. Burden on the Component. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the Component and not on the Parties. However, a Component cannot access, consider, disclose, or otherwise use a

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

- 7.8. Investigative Report. Investigator will complete a written Investigative Report that includes summaries of interviews conducted; photographs, if any; documents and materials received; descriptions of relevant evidence; summaries of relevant electronic records; and a detailed report of the events related to the incident. When Investigator is not the Title IX Coordinator, the Investigative Report will be submitted to the Title IX Coordinator to ensure all elements of the investigation have been completed. The Title IX Coordinator will forward the Investigative Report to the Decision Maker.
- 7.9. Notice of Hearing. Upon completion of the Investigative Report, the Title IX Coordinator will send the Notice of Hearing and the Investigative Report to all Parties and their Advisors. The Notice of Hearing and Investigative Report will be sent no less than ten (10) calendar days prior to the scheduled hearing to allow all Parties an opportunity for response.<sup>1</sup>
- 7.10. Pre-Hearing Instructions. The following items should be provided to the Decision Maker no later than three (3) calendar days prior to the date of hearing and apply equally to both Parties:
  - 7.10.1. any written response to the investigative Report;
  - 7.10.2. documents, or other evidence to be used at the hearing;
  - 7.10.3.



hearing to give each Party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

7.13. Documents. Each Party shall have the opportunity to present relevant documents to the Decision Maker for consideration at the hearing. Only documents and other evidence pre-submitted in accordance with Section 7.10 will be considered.

7.14. Witnesses. Each Party shall have the opportunity to present fact and/or expert witnesses to the Decision Maker for consideration at the hearing.

7.15. Determination of Relevance of Questions. Only relevant questions may be asked of a Party or witness during the hearing. Before a Party or witness answers a cross-examination or other question, the Decision Maker must first determine whether the question is relevant.

7.15.1.

relevant unless offered to prove that someone other than the Respondent committed the alleged misconduct or if the questions and evidence concern specific incidents of the Respondent's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

7.15.2.

a question excluded is not relevant. A relevancy decision is final and may only be challenged as a procedural defect on appeal, as provided in this Policy.

7.16. Live Cross-Examination (Directly, Orally, in real time). The cross-examination of a Party or witness must be conducted by the other Party. A Party may not directly question the other Party or witness.

7.17. (Intentionally left blank.)

7.18. Alternative Hearing Locations. The hearing may be conducted with all Parties and witnesses physically present in the same geographic location, on, any or all Parties, or witnesses, or other participants may appear at the hearing virtually. At the request of either Party, the Component shall provide for the entire hearing, including cross-examination, to occur with the Parties in separate rooms with technology that enables the Parties to see and



7.21.1.1. procedural irregularity, including a relevancy determination, that affected the outcome of the matter;

7.21.1.2.

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

Activity.

## 8. Non-Title IX Grievance Process

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







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

8.5.3.3.

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

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

8.8.1.1. The Component Representative for hearings related to the Non-Title IX Sexual Misconduct Coordinator;

8.8.1.2. The Title IX Coordinator is responsible for arranging the hearing by notifying the Parties of the hearing dates, the availability of documents to be used at the hearing, the witnesses expected to provide information at the hearing, as well as deadlines for submission of questions.

8.8.1.3. Each Party shall receive a copy of the written request for hearing and notice of the hearing, and has a right to be present.

8.8.1.3.1. Neither Party shall be compelled to attend any hearing. The hearing may be conducted with all Parties and witnesses physically present in the same geographic location or, at the

Parties, witnesses, or other participants may appear at the hearing virtually.

8.8.1.3.2. At the request of either Party, the Component shall provide for the entire hearing to occur with the Parties in separate rooms with technology that enables the Parties to see and hear each other.

8.8.1.4. Complainant and Respondent may submit written questions for the other Party and any





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

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

8.8.4. Faculty Hearing. Tenured faculty receiving a Sanction that









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

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

## **10. Administrative Requirements**

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

10.1.1. The web page shall be easily accessible through a clearly page.

10.1.2. contain a clearly identifiable link to enable an individual to make an anonymous Report of an incident of Sexual Misconduct.

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

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

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

10.2.1.2. Specifically, training will include:

10.2.1.2.1. definitions of Sexual Misconduct

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

as described in this Policy;

10.2.1.2.9. campus and community resources available to Complainants or Respondents;

10.2.1.2.10. interim safety measures available for Complainants; and,

10.2.1.2.11. descriptions of additional and ongoing Sexual Misconduct prevention and awareness campaigns and training.

10.2.1.3. Each entering freshman and undergraduate transfer Student, and New Employees shall attend an orientation regarding Sexual Misconduct and the Sexual Misconduct Policy during the first semester or term of enrollment or employment. The Component shall establish the format and content of the orientation, which may be provided online. The orientation must include the name, office location, and contact

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Coordinator. The orientation must contain a statement regarding:

10.2.1.3.1. the importance of a victim of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;

10.2.1.3.2. the right of a victim of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking to report the incident to the Component and to receive a prompt and equitable resolution of the Report; and,

10.2.1.3.3. the right of a victim of a crime to





10.2.3.4.1. the use of technology to be used in a live hearing, to be received prior to that hearing; and,

10.2.3.4.2. issues of relevance of questions and evidence, including when questions and evidence about the predisposition or prior sexual behavior are not relevant.

10.2.3.5. Materials used in training of Title IX Personnel must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

10.2.4. Trauma-Informed Investigation Training. Each peace officer employed by a Component shall complete training on trauma-informed investigation into allegations of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking.

10.2.5. Posting of Training Materials. All materials used to train Title IX personnel as described in Section 10.2.3 must be made publicly available on the requirement applies regardless of whether materials were created by or procured by the Component.

10.2.6. Memoranda of Understanding Required. To facilitate effective communication and coordination regarding allegations of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking a Component shall enter into a memorandum of understanding with one or more:

10.2.6.1. local law enforcement agencies;

10.2.6.2. sexual harassment, Sexual Assault, Dating Violence, or Stalking advocacy groups; and,

10.2.6.3. hospitals or other medical resource providers.

10.3. \_\_\_\_\_ as  
Prescribed by Statute

10.3.1. The Title IX Coordinator of each Component, shall, once every three months, submit a written report of sexual

misconduct allegations received by Responsible Employees

information:

- 10.3.1.1. the number of reports of Sexual Harassment, Sexual Assault, Dating Violence and Stalking during the reporting period;
- 10.3.1.2. the number of investigations conducted during the reporting period;
- 10.3.1.3. the final dispositions occurring during the reporting period; and,
- 10.3.1.4. the number of reports for which the Component determined not to initiate a disciplinary process during the reporting period.



during the reporting period; and,

10.4.1.5. any disciplinary actions taken against Employees who knowingly fail to report an incident of Sexual Harassment, Sexual Assault, Dating Violence or Stalking, when required to do so, or who knowingly, with intent to harm or deceive, make a false report of such conduct.

10.4.2. The report to the TSUS Board of Regents may not identify any person, and a copy of such report must be submitted to the Chancellor and the Vice Chancellor and General Counsel.

10.4.3. A President is not required to submit a report to the TSUS Board of Regents for any semester the Component has fewer than 1,500 enrolled students unless more than five reports of either Sexual Harassment, Sexual Assault, Dating Violence or Stalking were received during that semester.

10.4.4. \_\_\_\_\_ents shall \_\_\_\_\_ website.

10.4.5. The President of each Component shall annually certify in writing to the Texas Higher Education Coordinating Board that the Component is in substantial compliance with this subsection. The President shall send a copy of the letter certifying substantial compliance to the Chancellor and the Vice-Chancellor and General Counsel.

10.5. Recordkeeping.

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

10.5.1.1. the responsibility determination;

10.5.1.2. any audio or audiovisual recording or transcript of any live hearing;

10.5.1.3. the disciplinary sanctions imposed on the Respondent, if any;

10.5.1.4. the remedies provided to the Complainant, if



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

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

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

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

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

**Complainant** means an individual who is alleged to be the victim of Sexual



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

**Education Program or Activity** means all the operations of a Component on or off campus, including any building owned or controlled by a student organization

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

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

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

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

**Parties** means the Complainant and Respondent.

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

**Rape** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the Victim. See also definition of Sexual Assault herein.

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

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

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

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

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

**Sex Discrimination** also referred to herein as sexual discrimination involves treating sex.

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

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

(i) Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent

(a) Forcible Rape: (Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

(b) Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

(c) Sexual Assault with an Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or





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

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

### **Sexual Harassment:**

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

- (i) A Component's Employee conditioning provision of an aid, benefit or service of the Component on an individual's participation in unwelcome sexual conduct q1a(o)-3(r ser)5(v)4(i)-3( Bs3(c)8(t)-3( q1a(o)-3(n3(4))



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

- Immediate and appropriate corrective action, including measures designed to or deter Sexual Harassment. See Section 3 of this Policy.

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

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

**Title IX Coordinator** is the person who has been designated by each Component to coordinate efforts to comply with and implement this Policy. The Title IX Coordinator is responsible for conducting the administrative investigation of reports

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