

## **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**

San Jacinto College is committed to maintaining an educational environment that is free from discrimination based on sex. The College prohibits sexual misconduct perpetrated against a student or employee by other students, employees, or third parties under the control of the College. "Sexual Misconduct" as used in this Procedure refers to sexual harassment, sexual assault, dating violence, domestic violence, and stalking as defined under Title IX of the Education Amendments of 1972 and that occurs in an education program or activity of the College. This Procedure also addresses conduct of a sexual nature that is objectively offensive and inappropriate for an educational environment but that may not satisfy legal definitions of sexual harassment, sexual assault, dating violence, domestic violence, or stalking (referred to collectively as "Other Inappropriate Conduct"). College policy prohibits retaliation against any member of the College community who in good faith reports a violation of College policy or who cooperates in an investigation, disciplinary process, or judicial proceeding arising from such a report.

This Procedure applies to all College students, administrators, faculty, staff, and third parties within the College's control.

This Procedure applies to conduct that occurs on College-owned or College-leased property or in a College vehicle; during a College activity or event sponsored by the College whether on campus or off campus; in a building owned or controlled by a student organization that is officially recognized by the College; or in other instances in which the College exercised substantial control over the alleged perpetrator and the context in which the conduct occurred. This policy applies to off-campus conduct that adversely affects or jeopardizes another student's equal access to the College's education programs or activities.

The College's response to reports of Sexual Misconduct and Other Inappropriate Conduct is coordinated by the College's Title IX Coordinators. A list of the College's Title IX Coordinators and their contact information is found here <https://www.sanjac.edu/reporting-sexual-misconduct>.

A glossary of definitions used in this Procedure is found in Section 12 below.

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 misconduct and *filing* a Formal Complaint of misconduct. Reporting an allegation informs the College of an incident, which enables the College to inform the alleged victim of his or her rights and options, which includes the right to request support services or supportive measures (sometimes described as interim measures). Reporting an allegation does not necessarily result in the initiation of an investigation and the Grievance Process under this Procedure.

When an individual reports an allegation (or when someone reports an allegation on behalf of an individual), the alleged victim will be offered individualized supportive measures and will be informed of their option to file a Formal Complaint. If the individual desires an investigation and wishes to invoke the Grievance Process, he or she should file a Formal Complaint as stated in Section 9. As explained below, filing a Formal Complaint typically will result in an investigation and hearing to determine whether the responding party should be found responsible and whether the responding party should be sanctioned.

## **3. Mandatory Reporting by Employees**

Any employee who, in the course and scope of their employment, observes or receives information regarding an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking that was committed by or against a San Jacinto College student or employee, must promptly report the incident or allegation to one of the College's Title IX Coordinators in accordance with this Procedure unless an express exception applies. The duty to report applies if the student was enrolled at the College at the time of the incident or if the employee was employed by the College at the time of the incident. The employee shall report all known information regarding the incident, including, if available, the name of the alleged victim, respondent, location, and nature of the incident. If the alleged victim has expressed a desire for confidentiality, the employee shall provide this information to the Title IX Coordinator.

Employees who fail to make a mandatory report are subject to termination in accordance with College termination procedures. Additionally, the employee is subject to criminal prosecution as stated in Section 51.255 of the Texas Education Code.

An employee who makes a report under this policy may have additional reporting obligations under other law. Employees who are Campus Security Authorities (CSA) under the Clery Act will have an obligation to report certain incidents to Campus Police in accordance with the Clery Act. Additionally, 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 within 48 hours report the suspicion to the Texas Abuse

Hotline (1-800-252-5400) at the Texas Department of Family and Protective Services (DFPS). If the child is in immediate danger, the employee should first call 9-1-1 first and then the Texas Abuse Hotline.

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

**Reporting Process for Employees:** Employees may fulfill their mandatory reporting obligation by speaking with or emailing a College Title IX Coordinator or submitting a report via the College's online portal at <http://sjc.prod.acquia-sites.com/form/employee-reporting-sexual-misconduct>.

**Limited Exceptions for Mandatory Reporting:** Employees with a legal duty of confidentiality – such as a licensed professional counselor providing therapeutic services – are required to report only the type of the incident (e.g., sexual assault or stalking) but are not required to provide any other details, such as the names of the individuals involved in the incident. Victims of an alleged incident are not required to report their own incidents.

**Responsible Employees with a Duty to Take Corrective Action:** Some employees have the authority and duty to institute corrective measures when they have actual knowledge of alleged violations of Title IX. Responsible employees are those who serve at or above the level of dean or director.

#### 4. Reporting Procedures

**4.1 Reporting to a Title IX Coordinator:** Any student or other individual may report Sexual Misconduct or Other Inappropriate Conduct whether or not the person reporting is the alleged victim. Reports may be submitted to one of the College's Title IX Coordinators in person or by mail, telephone, electronic email, or online portal at [www.sanjac.edu/incident-report](http://www.sanjac.edu/incident-report). Submitting a report does not obligate the individual to file a Formal Complaint or to participate in an investigation.

Allegations against students also may be reported to the Compliance & Judicial Affairs Office by calling 281-478-2756. Allegations against employees may be reported to the Human Resources Department by calling 281-998-6115. A complaint against a Title IX Coordinator should be reported to the Vice Chancellor of Fiscal Affairs (281-998-6306).

When an individual (or someone on their behalf) makes a report to a Title IX Coordinator, the Title IX Coordinator will notify the individual in writing of his or her rights and options, including how to file a Formal Complaint if desired and how to request support services or supportive measures (addressed in Section 6 of this Procedure). An individual may request support services or supportive measures without filing a Formal Complaint.

**4.2 Reports to Law Enforcement:** The reporting party may report a crime in progress by calling 911. If the incident occurred on a San Jacinto College campus, the reporting party may make a report to the San Jacinto College (SJC) Police Department (281-476-9128) or to another police agency with jurisdiction. A police department's geographic jurisdiction will depend on the location of the incident ([click here](#)) for a list of other police agencies near and around the College's campuses). 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 decision whether to report to law enforcement belongs to the alleged victim. Crime victims may choose to report an offense to law enforcement or to decline to report a crime to law enforcement. Additionally, regardless of whether the alleged victim files a police report, the alleged victim has a right to file an administrative complaint with the College or to seek support services or supportive measures from the College (addressed in Section 6 of this Procedure). An individual may request the assistance of a Title IX Coordinator in making a police report.

**4.3 Evidence Preservation:** Victims of an alleged sexual assault or other Sexual Misconduct are encouraged to go to a hospital for a medical exam or treatment as promptly as possible and to preserve all evidence related to the assault or misconduct, including potential DNA evidence and evidence of bruising or other injuries. Victims should not wash, shower, or change clothes prior to a medical exam or treatment. Clothing, if removed, should be placed in a paper bag. Evidence of emails and text messages should be preserved.

**4.4 Confidential Reporting:** Confidential reporting opportunities are discussed in Section 7 of this Procedure.

**4.5 Anonymous Reports:** Any person may make an anonymous report to a Title IX Coordinator. However, depending on the facts and circumstances of the anonymous report, the College may be limited in its ability to stop the alleged conduct, collect evidence, or remedy the situation.

**4.6 Formal Complaints:** Formal Complaints may be filed in accordance with Section 9.

**4.7 External Reports:** Any person may contact the Office for Civil Rights to report a violation of Title IX:

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)

#### **4.8 Reports Against Title IX Coordinator or Chancellor**

A Formal Complaint against a Title IX Coordinator shall be filed directly with the Vice Chancellor of Fiscal Affairs (281-998-6306) who shall take appropriate, prompt action to ensure that the complaint is investigated including, as appropriate, hiring an external investigator, which may be an attorney. This Procedure shall apply to the extent practicable; avoidance of any conflict of interest is paramount.

A Formal Complaint against the Chancellor or any Board member shall be filed with the Board Chairperson. Charges against the Chairperson shall be filed with the Vice Chairperson. The official receiving the charge shall take appropriate, prompt action to ensure that the complaint is investigated including, as appropriate, hiring an external investigator, which may be an attorney. The investigation report shall be presented to the Board of Trustees.

### **5. Immunity from Discipline; Protection Against Retaliation**

**5.1 Immunity:** College policy prohibits charges against an individual for code of conduct or disciplinary violations that do not involve sex discrimination or sexual misconduct but arise out of the same facts or circumstances as a report or complaint of sex discrimination or sexual misconduct when the purpose of the charge is to interfere with any right or privilege secured by this policy or Title IX and its implementing regulations.

To encourage reporting of Sexual Misconduct and Other Inappropriate Conduct, the College may grant immunity (also known as amnesty) from disciplinary action to a student or employee who acts in good faith in reporting an alleged violation, filing a Formal Complaint, or participating in a Grievance Process. For example, students who report that they were a victim of sexual assault will not face disciplinary charges for other code of conduct violations, such as underage drinking, that occurred in conjunction with

the alleged sexual assault. A person who allegedly engaged in Sexual Misconduct or Other Inappropriate Conduct may not avoid discipline by reporting his or her own acts of Sexual Misconduct or Other Inappropriate Conduct.

**5.2 Protection Against Retaliation:** Retaliation is prohibited against an individual who in good faith reports an incident under this Procedure, opposes conduct prohibited by this Procedure, or cooperates in an investigation, disciplinary process, or judicial proceeding arising from such a report. Retaliation is a decision or action that is materially adverse to the reporting party and is of the type that would dissuade a reasonable person from exercising his or her rights to file a complaint or to participate in an investigation. Unlawful retaliation does not include petty slights or annoyances. Students who believe that they have been subjected to retaliation may file a complaint pursuant to Complaint Procedure 300 in the Student Handbook. Employees who believe that they have been subjected to retaliation may file a complaint pursuant to Human Resources Procedure 3-19(A)(2).

## **6. Resources and Assistance and Supportive Measures for Reporting Parties and Respondents**

### **6.1 Immediate Assistance**

**Medical care:** Individuals who have experienced sexual violence are encouraged to seek immediate medical care to obtain treatment or medication and to preserve evidence, including DNA evidence. Visiting a doctor does not obligate the individual to file a complaint with the College or the police. The individual should consider seeking a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) if the incident occurred within the preceding four 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 the law enforcement agency that is investigating the assault 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.

**Counseling Services:** A student who has experienced Sexual Misconduct or Other Inappropriate Conduct may benefit from immediate counseling or psychological care, regardless of whether the individual makes any other type of report. A student may obtain psychological support from a private provider or from the College's Educational Planning, Counseling, & Completion office. Students desiring counseling should contact:

Any Educational Planning, Counseling, and Completion Office	
Central & Maritime Campuses	281-478-2768
North & Generation Park Campuses	281-459-7192
South Campus	291-922-3444

Individuals accused of Sexual Misconduct or Other Inappropriate Conduct also may desire psychological support. Student respondents may seek services as stated above.

Faculty and staff may contact the Employee Assistance Program at 713-500-3327.

Community resources available to all individuals are listed at [Resource Information](#).

An individual's counseling and medical records are confidential and will not be used by the College in a Grievance Process without the individual's written consent.

### **6.2 Support Services and Supportive Measures for Reporting Parties and Respondents**

The College may provide supportive services and protective measures (sometimes called “interim measures” or accommodations) without any fee or charge to a reporting party or respondent in connection with the report or filing of a complaint or even if no formal complaint has been filed. Support measures are non-disciplinary, non-punitive individualized services offered when appropriate and reasonably available. Any measures that are disciplinary in nature cannot be implemented until after the conclusion of a Grievance Process (see Sections 9 and 10), unless an emergency removal is appropriate (see Section 6.3). Supportive measures are designed to restore or preserve access to the individual’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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Under state law and College Policy, the reporting party and the respondent are entitled to drop a course in which both parties are enrolled without an academic penalty.

The College must maintain as confidential any supportive measures provided to the reporting party or respondent, to the extent that maintaining such 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.

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

**Emergency Removal of a Student.** In some circumstances, the College may determine that removal of a student-respondent from campus would be appropriate prior to a determination of responsibility. The College must undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of a student or other campus individual arising from the allegations of misconduct justifies removal, and provide the respondent written notice and an opportunity to challenge the emergency removal. The administration shall send written notice to the student via (i) hand delivery or (ii) electronic mail and first-class U.S. mail. Emergency removal can include removal from a specific activity or temporary suspension from all campuses and activities. A student who is notified of an emergency removal is entitled to a hearing at his or her request. The request must be in writing and submitted within five school days of the emergency removal. The hearing shall be held within five school days, barring unforeseeable circumstances. The hearing 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, the hearing shall be conducted by the senior instructional leader from another College campus. An emergency removal will take effect immediately even if the affected student requests a hearing. The purpose of the hearing is not to resolve the underlying charge of misconduct but to determine if removal is justified pending a hearing on the underlying charge.

**Employee Administrative Leave.** In some circumstances, the College may determine that removal of an employee-respondent from campus would be appropriate prior to 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 be in accordance with the College’s contract and employment policies.

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. Parties Rights' Regarding Confidentiality**

**Confidentiality Generally:** Individuals identified in a report or Formal Complaint as a witness, reporting party, or respondent may desire privacy and may wish to avoid public disclosure of their names. The College desires to be respectful of each person's interest in privacy. Certain laws restrict 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 have a duty to report allegations of sexual harassment, sexual assault, dating violence, domestic violence, and stalking to a Title IX Coordinator. Additionally, when a Formal Complaint is initiated, the investigation process may require certain disclosures, including the parties' names, in order to conduct a fair and thorough investigation. The College will share information with individuals only as necessary, which may include investigators, witnesses, the reporting party, the respondent, parties' advisors, decision-makers, appellate officers, College administrators, attorneys, or trustees who have a responsibility to ensure compliance with this Procedure and applicable law.

**Confidential Consultations:** Students may confidentially discuss an incident 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 the Title IX Coordinators or to law enforcement. Counselors will not report the student's name or details without the consent of the student. Individuals also 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 at [Resource Information](#).

## **8. Reporting Party's Request Not to Investigate**

In some instances, a reporting party might decline to pursue a complaint or participate in an investigation, or he or she may wish to keep the matter completely confidential or to withdraw a Formal Complaint after it is filed. In such circumstances, 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 evaluate:

1. The seriousness of the alleged conduct;
2. Whether the College has received other reports of a Title IX incident involving the same Respondent(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.

The Title IX Coordinator(s) must inform the reporting party in writing of the decision whether or not to investigate. If the Title IX Coordinator(s) decide not to investigate based on the reporting party's request not to investigate, the College shall take any steps determined to be necessary to protect the health and safety of the College community in relation to the alleged incident.

If the Title IX Coordinator(s) determines that an investigation is necessary, the reporting party is not required to participate.

## **9. Formal Complaints and Investigations Pursuant to the Title IX Grievance Process**

### **9.1 Jurisdiction; Application of this Procedure**

“Sexual Misconduct” and “education program or activity” as used below are defined in the glossary in Section 12 this Procedure. When a proposed complaint does not satisfy the conditions stated below in sections 9.1.1 through 9.1.4, the complaint will be handled in accordance with Section 10.4.

### **9.1.1 Complaints by Students Against Students**

The Title IX Grievance Process applies if all of the following conditions are met:

- a. The Formal Complaint contains any allegation of Sexual Misconduct, and the Sexual Misconduct occurred in the United States.
- b. The Sexual Misconduct occurred while the respondent was participating in or attempting to participate in an education program or activity of the College.
- c. The Sexual Misconduct occurred while the reporting party was participating in or attempting to participate in the education programs or activities of the College.
- d. At the time of the filing of the complaint, the reporting party was participating in or attempting to participate in the education programs or activities of the College.

### **9.1.2 Complaints by Students Against Employees**

The Title IX Grievance Process applies if all of the following conditions are met:

- a. The Formal Complaint contains any allegations of Sexual Misconduct, and the Sexual Misconduct occurred in the United States.
- b. The respondent-employee was employed by the College at the time of the alleged Sexual Misconduct and at the time of the filing of the Formal Complaint.
- c. The student-reporting party was participating in or attempting to participate in an education program or activity at the time of the Sexual Misconduct.
- d. At the time of the filing of the complaint, the reporting party was participating in or attempting to participate in the education programs or activities of the College.

### **9.1.3 Complaints by Students Against Third Parties**

In some instances, a student might allege misconduct by a third party, such as a campus visitor, volunteer, or contractor. The Title IX Grievance Process applies if all of the following conditions are met:

- a. The Formal Complaint contains any allegations of Sexual Misconduct, and the Sexual Misconduct occurred in the United States.
- b. The College had substantial control over the respondent at the time of the Sexual Misconduct, and the Sexual Misconduct occurred in a context under the substantial control of the College.
- c. The Sexual Misconduct occurred while the reporting party was participating in or attempting to participate in the education programs or activities of the College.
- d. At the time of the filing of the complaint, the respondent was under the substantial control of the College.

### **9.1.5 Complaints By Employees Against Students**

The Title IX Grievance Process applies to a complaint by an employee against a student if all of the following conditions are met:

- a. The Formal Complaint contains any allegations of Sexual Misconduct, and the Sexual Misconduct occurred in the United States.
- b. The College had substantial control over the respondent at the time of the Sexual Misconduct, and the Sexual Misconduct occurred in a context under the substantial control of the College.
- c. The Sexual Misconduct occurred while the reporting party was employed in the education programs or activities of the College.
- d. At the time of the filing of the complaint, the respondent was under the substantial control of the College.

## **9.2 Formal Complaints**

Although individuals may file a Formal Complaint 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.

To request an investigation and commence the Grievance Process, the reporting party must submit a written Formal Complaint to a Title IX Coordinator. The written complaint may be delivered in person or submitted by mail, electronic mail, or via an online incident portal ([www.sanjac.edu/incident-report](http://www.sanjac.edu/incident-report)). The complaint must contain the reporting party's physical or digital signature or otherwise indicate that the reporting party is the person filing the complaint. The reporting party must submit a written statement containing the known details of the alleged conduct that is the subject of the Formal Complaint, including the following:

- Reporting Party's name and contact information;
- Respondent's name;
- Detailed description of the alleged conduct or event that is the basis of the alleged violation under this Policy;
- Date(s) and location(s) of the alleged occurrence(s);
- Names of any witnesses to the alleged occurrence(s); and
- The resolution or remedy sought.

In some instances, the College's Title IX Coordinator(s) may sign a Formal Complaint against a respondent and, in doing so, will initiate the Grievance Process. In such instances, the complaint is not filed on behalf of a particular reporting party, but, rather, is filed on behalf of the institution so that fact-finding through a fair and neutral process can occur. The Title IX Coordinator is not considered a reporting party or a party in such instances. If the Title IX Coordinator prepares a Formal Complaint, the reporting party may, but is not required to, participate in the Grievance Process.

## **9.3 Review of the Formal Complaint; Dismissal of Complaints**

**9.3.1 Initial Review:** Upon receipt of a Formal Complaint, the College must evaluate whether the allegations, if proven to be true, (i) describe Sexual Misconduct; (ii) do not describe Sexual Misconduct but do describe Other Inappropriate Conduct or a violation of other Board policy or the Code of Student Conduct; or (iii) do not describe a violation of College policy. If the complaint omits pertinent information necessary to evaluate the College's jurisdiction, such as the location of the incident, the Title IX Coordinator shall provide the reporting party a reasonable amount of time to provide supplemental information before making a decision that the complaint does not describe a violation.

**9.3.2 Mandatory Dismissal:** The College will dismiss a Formal Complaint, and it will not be processed under the Title IX Grievance Process, if the allegations do not describe Sexual Misconduct under this Procedure, did not occur in a College program or activity, or did not occur in the United States. If the College dismisses the complaint under such circumstances, the College reserves the right to investigate the matter in accordance with other College policies and procedures.

**9.3.3 Discretionary Dismissal:** The College may dismiss a Formal Complaint for any of the following reasons:

- (a) The employee-respondent is no longer employed by the College.
- (b) The reporting party requests dismissal in writing (see Section 8).
- (c) The student-respondent is no longer enrolled at the College (see Section 9.3.4).
- (d) The conduct alleged does not describe a violation of College policy.
- (e) Other circumstances exist that prevent the College from gathering evidence sufficient to reach a determination as to the allegations in the Formal Complaint.

**9.3.4 Withdrawal of Student-Respondent While Charges are Pending:** If a student-respondent withdraws or graduates from the College after a Formal Complaint is filed, the College may not end the Grievance Process or issue a transcript to the respondent until the College makes a final determination of responsibility. In such instances, the College shall expedite the College's disciplinary process as necessary to accommodate both the respondent's and reporting party's interest in a speedy resolution. Accordingly, the following procedure will be utilized in such circumstances:

- (a) If the student-respondent withdraws or graduates after a Grievance Hearing has commenced under Section 10 but before the decision-maker has issued his or her ruling on responsibility, the hearing process will continue until the decision-maker issues that ruling.
- (b) If the student-respondent withdraws or graduates before commencement of the Grievance Hearing, the process in Section 10.4 will apply.

**Transcript Notation Rule:** If a student-respondent withdraws prior to the final determination, and upon making a determination of responsibility, the College will make a determination of whether 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).

**9.3.5 Notification of Dismissal:** If the College dismisses a Formal Complaint, the College must provide both parties written notice of the dismissal and the reasons for the dismissal. The dismissal notice may state whether the complaint and allegations will be addressed pursuant to a different College policy or procedure. If the Formal Complaint does not describe Sexual Misconduct but does describe Other Inappropriate Conduct or other policy or code violations, the complaint will be processed in accordance with Section 10.4 below.

## **9.4 Written Notice of Formal Complaint Pursuant to the Title IX Grievance Process**

The Title IX Coordinator will provide written notice to the parties regarding receipt of the Formal Complaint. The notice will contain the following information:

- 1) a description of the support services and supportive measures available to reporting parties and respondents under Section 6.2;
- 2) a copy of the College's sexual misconduct policies and procedures;

- 3) a statement of the allegations of misconduct with sufficient detail known at the time of the filing of the complaint, including the identity of the parties and the date(s), time(s), and location(s) of the alleged conduct (if known).
- 4) identification of the alleged policy violations or Code of Conduct violations being investigated;
- 5) a statement that the respondent is presumed not responsible and that a determination regarding responsibility will be made at the conclusion of the Grievance Process;
- 6) a statement regarding the parties' rights, including the right to an advisor or attorney of their choice and the right to inspect and review the evidence gathered during the investigation that is directly related to the allegations in the Formal Complaint; and
- 7) a statement regarding the prohibition on knowingly making false statements during the Grievance Process (see Section 10.1).

## **9.5 Consolidation of Complaints**

The College may consolidate formal complaints by one or more reporting parties against the same respondent or against multiple respondents if the allegations of misconduct arise out of the same facts or circumstances.

## **9.6 Investigations of Formal Complaints Pursuant to the Title IX Grievance Process**

**9.6.1** One or more impartial investigators shall be appointed to conduct the investigation. The Title IX Coordinator will notify the reporting party and the respondent of the name and contact information of the investigator(s). The investigator shall conduct a thorough investigation in light of the allegations at issue and the availability of witnesses.

**9.6.2** The investigator shall provide the respondent a reasonable time to submit a written response to the notice under Section 9.4, typically 10 calendar days, barring unusual circumstances that warrant additional time.

**9.6.3** The College will provide reasonable written notice to a party whose participation is invited or expected of the date, time, location, and purpose of all meetings, investigative interviews, or other proceedings under the Grievance Process.

**9.6.4** The investigator shall interview the reporting party, the respondent, and other individuals determined by the investigator to possess relevant information. However, if a party or witness declines to be interviewed by the investigator or is not available despite multiple attempts to contact the person, the investigation will continue. The reporting party and the respondent each will be permitted to submit documentation or other tangible evidence to the investigator such as documents, emails, text messages, photographs, and recordings. The reporting party and the respondent each may suggest witnesses to interview 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 in light of the allegations and the availability of the witnesses or evidence. The investigator will prepare a typed summary of each witness's interview to be included in the record of the investigation.

**9.6.5** During meetings and proceedings under the Title IX Grievance Process, the parties have an equal right to be represented or accompanied by an advisor of their own choosing, including an attorney. Advisors, however, may not actively participate in meetings, interviews, or hearings unless expressly permitted by this Procedure. If a party has an advisor, the party shall provide the name and contact information of the advisor to the investigator and the Title IX Coordinator no later than 10 school

days prior to the hearing and state whether the College is authorized to communicate with the advisor and to provide information required by this Procedure to be provided to a party.

**9.6.6** Barring unusual circumstances (*e.g.*, multiple reporting parties and witnesses or the complaint is filed immediately prior to the winter break), the investigation ordinarily will be completed within 60 to 90 calendar days. The investigator shall inform the parties and the Title IX Coordinator if additional time is needed and the reasons why additional time is needed.

**9.6.7** Prior to the completion of the investigation report, the investigator will provide the parties with access to all evidence obtained during the investigation (whether relevant or not), including summaries of the interviews with the parties and other witnesses. The investigation record 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 10 calendar days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the investigator. Extensions of time may be granted for good cause, in which case both parties will be entitled to the same extension. Requests for extensions of time must be received by the investigator prior to the deadline.

**9.6.8** The investigator shall consider the parties' submissions, if any, when preparing the investigation report. The completed investigation report will outline the allegations of misconduct, provide a procedural history detailing the steps taken to conduct the investigation, and fairly summarize relevant evidence, including witness statements. The investigator will provide a completed investigation report to the Title IX Coordinator and concurrently to both parties (and to each party's advisor, if any, if consent for disclosure has been provided by the party). The completed investigation report must be provided to the parties at least 10 calendar days prior to the date of the hearing under Section 10. Additionally, each party shall have a right of access and inspection to the other party's response to the investigation record referenced in Section 9.6.7.

## **9.7 Concurrent Criminal or Civil Proceedings**

The College will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to take action on 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 reporting party, the respondent, and the College.

## **10. Title IX Grievance Hearing Processes**

### **10.1 Prior Sexual History**

A reporting party's sexual predisposition or prior sexual behavior is not relevant in any investigation or hearing format under this Procedure except where questions and evidence about a reporting party's prior sexual behavior are offered to prove that someone other than the respondent committed the alleged conduct charged by the reporting party or if the questions or evidence concern specific incidents of the reporting party's prior sexual behavior with the respondent and are offered to prove the reporting party's consent of the alleged conduct.

### **10.2 Hearing Process for Formal Complaints of Sexual Misconduct**

The following process will apply to Formal Complaints involving Sexual Misconduct after completion and delivery of the investigator's report under Section 9.6.8.

**10.2.1 Sexual Misconduct Complaint Hearing Board.** Formal Complaints will be heard by a three-person Hearing Board composed of at least one full-time faculty member and one professional staff member. The third member may be a faculty member or professional staff member. All Board members must receive training as required by applicable law. One Board member shall serve as the chairperson. Board members shall be impartial. Employees who were witnesses to the incident under review or who were involved in the investigation or evaluation of the charges under review shall be ineligible to serve as Board members. Title IX Coordinators may not serve on a Hearing Board.

**10.2.2 Written Notice of the Hearing.** The College will provide at least 10 calendar days written notice to parties of the hearing date (and to a party's advisor when authorized by that party). The notice will provide the date, time, location, and names and titles of the Board members. 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 conclusion 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. Advisors cannot actively participate at the hearing, except to ask questions of the other party or witnesses.

The notice shall be provided by regular first-class mail and email to the San Jacinto 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 the sending of the message. A party's failure to update his or her 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.

**10.2.3 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 Board within three school days after notice of the identity of the Board members. The challenge must state the reasons for the challenge. The chairperson will be the sole judge of whether he or she or other members can serve with impartiality and objectivity. If a Board member recuses himself or herself, an alternate hearing officer will be assigned.

**10.2.4 Access to Evidence.** Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report prepared pursuant to Section 9.

**10.2.5 Separate Rooms and Virtual Participation.** At the request of either party, the College will arrange a hearing with the parties located in separate rooms with technology enabling the Hearing Board and parties to simultaneously see and hear the

participants answering questions. Participants may appear at the hearing virtually and are not required to be physically present at the same physical location of the hearing.

**10.2.6 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. Objections shall be directed to the hearing board. The hearing board will rule on procedural matters and objections regarding testimony and exhibits. Finally, the hearing board will give effect to legally recognized privileges, such as the attorney-client privilege. The hearing board may seek legal advice from an attorney as appropriate, including the seeking of legal advice regarding the assertion of privilege by any party or witness, even if such would require a recess in the hearing.

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 closing argument, taking into consideration the complexity of the case. Each party will receive the same amount of time for a closing argument. 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 may 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 as to whether the advisor's question is relevant to the alleged conduct charges. If the chairperson finds that the proposed question is not relevant, the chairperson must explain the basis of the decision to exclude the question. If the chairperson allows a question, the party or witness must answer the question.

If a party or witness declines to submit to any cross-examination questions during the hearing, the Hearing Board will not rely on any statement of that party or witness when making a responsibility determination. The Hearing Board will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

These rules, however, do not preclude the Hearing Board from considering a party's testimony about statements made by the other party that constitute prohibited conduct. For example, if the reporting party alleges that the respondent made sexually harassing statements, the Hearing Board may consider the reporting party's testimony about the alleged statements even if the respondent declines to submit to cross-examination.

**10.2.7 Remedies, Disciplinary Action, and Sanctions:** If the respondent is a student, available sanctions are outlined in Section C, Disciplinary Sanctions, of 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.

**10.2.8 Hearing Board Determination:** The Hearing Board shall prepare a written determination within 15 school days of the close of the evidence. The Hearing Board will engage in an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. The Hearing Board will not make credibility determinations based on a person's status as a reporting party, respondent, witness, student, or employee. 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 conduct; (E) the discipline or sanctions, if applicable; (F) the remedies, if applicable, designed to restore the reporting party'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 appropriate 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.

### **10.3 Appeal of a Determination under Section 10.2 or Dismissal of a Complaint under Section 9.3**

Either party may appeal a Hearing Board's determination regarding a respondent's responsibility under the Title IX Grievance Process or from the College's dismissal of a Formal Complaint (or any portion of a Formal Complaint) within seven school days of notification of such a determination on the following bases: (1) A procedural irregularity affected the outcome of the matter; (2) There is 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, investigator(s), or hearing officer 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, and the appeal procedures will apply equally for both parties.

In any case in which the respondent is an employee and the Hearing Board has determined that termination, nonrenewal, or suspension are appropriate, the Chancellor shall serve as the appellate officer.

Any non-appealing party (or the College) will have seven school days from the notification of an appeal to submit a written statement to the appellate officer. The appellate officer will prepare a written decision within 30 calendar days from receipt of the appeal, providing a rationale for the ruling. The appellate officer will simultaneously provide a copy to the parties and the Title IX Coordinator.

#### **10.4 Other Hearing Processes**

##### **10.4.1 Other Hearing Process – Student-Respondents**

The following procedures will apply in the following instances:

- (a) The Formal Complaint does not involve allegations of Sexual Misconduct but does involve allegations of Other Inappropriate Conduct or other policy or code violations.
- (b) The Formal Complaint involves a student-respondent who has withdrawn or graduated prior to commencement of a grievance hearing under Section 10.2.

The investigation procedures in Section 9 will apply. However, when the investigator prepares the investigation report under Section 9.6.8, the investigator shall include a preliminary determination regarding responsibility. 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 to the designated student officer who has not served as a witness, investigator, or decision-maker in the matter.

The designated student conduct officer will review the investigation report and investigation record and respond as follows within 10 school days:

- i) If the designated student conduct officer determines that there are insufficient grounds to establish that a violation of College policy or the Code of Student Conduct occurred, the complaint shall be dismissed. The final determination will be communicated in writing to the Title IX Coordinator and parties via email and, where necessary, by U.S. mail.
- ii) If the designated student conduct officer determines that the evidence is sufficient to establish a violation of College policy or the Code of Student Conduct, the designated student conduct officer will determine an appropriate sanction or sanctions given the nature of the allegations, the evidence, and the student's disciplinary history, if any. The range of sanctions available are those stated in Section C, Disciplinary Sanctions, of the Code of Student Conduct. The determination will be communicated in writing to the parties and the Title IX Coordinator via

email and, where necessary, by U.S. mail. If the student-respondent is no longer enrolled due to withdrawal or graduation, the determination of responsibility will be final, and no further adjudication or appeal process will apply.

iii) If the designated student conduct officer determines that further investigation is needed before a final determination can be made, the designated student conduct officer shall return the investigation report to the investigator with instructions on additional matters to be investigated. Notice of the decision for further investigation will be communicated in writing to the Title IX Coordinator and parties via email and, where necessary, by U.S. mail. Upon completion of additional investigation, the investigator will submit an amended or supplemental report, and the designated student conduct officer will follow the above steps for accepting or rejecting the preliminary determination.

### **Adjudication**

If the proposed sanction is less than suspension or expulsion, then the respondent may request an appeal using the Appeals to the Associate Vice Chancellor of Student Services process found in the Code of Student Conduct. The respondent and reporting party will each have an equitable opportunity to present evidence relevant to the alleged violation.

If the proposed sanction is a suspension in excess of five school days, then respondent may request an appeal using the Appeals to a Student Conduct Appellate Board process found in the Code of Student Conduct. The respondent and reporting party will each have an equitable opportunity to present witnesses and other evidence relevant to the alleged violation.

### **10.4.2 Other Hearing Process – Employee-Respondents**

The following procedure will apply when the Formal Complaint does not fall under the Title IX Grievance Process but does involve allegations of Other Inappropriate Conduct or other policy violations.

The investigation procedures in Section 9 will apply. However, when the investigator prepares the investigation report under Section 9.6.8, the investigator shall include a preliminary determination regarding responsibility. 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 to the Title IX Coordinator and the appropriate director, dean, or next level leader who has not been involved in the underlying dispute.

Thereafter, the appropriate leader will review the investigation report and investigation record and respond in accordance with Procedure 1-2 within 15 working days. The leader's disposition shall be communicated to the parties and Title IX in writing.

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 Section 9 of 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.

### **10.4.3 Other Hearing Process; Third Party Respondents**

The following procedure will apply when the Formal Complaint does not fall under the Title IX Grievance Process but does involve allegations of Other Inappropriate Conduct or other policy violations.

The investigation procedure in Section 9 will apply. However, when the investigator prepares the investigation report under Section 9.6.8, the investigator shall include a preliminary determination regarding responsibility. 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 to the Title IX Coordinator and the appropriate director, dean, or next level leader who has had no involvement in the underlying dispute.

Thereafter, the appropriate leader will review the investigation report and investigation record and respond within 10 school days with a final determination and providing a rationale for the determination. If the appropriate leader determines that there are insufficient grounds to establish a violation of College policy, the complaint shall be dismissed. If the appropriate leader determines that the evidence is sufficient to establish a violation of College policy, the appropriate leader will determine an appropriate sanction or sanctions given the nature of the allegations, the evidence, and the individual's disciplinary history, if any. If the appropriate leader determines that further investigation is needed before a final determination can be made, the appropriate leader shall return the investigation report to the investigator with instructions on additional matters to be investigated. Upon completion of additional investigation, the investigator will submit an amended or supplemental report, and the appropriate leader will follow the above steps for accepting or rejecting the preliminary determination. The leader's disposition shall be communicated to the parties and Title IX Coordinator in writing.

A respondent may appeal a finding of misconduct, the sanction, or both. Appeals must be filed within 7 school 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) There is 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, 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 had no involvement in the underlying dispute. Any non-appealing party (or the College) will have 7 school days from the notification of an appeal to submit a written statement to the appellate officer. The appellate officer will prepare a written decision within 30 calendar days from receipt of the appeal, providing a rationale for the ruling. The appellate officer will simultaneously provide a copy to the parties and the Title IX Coordinator.

## **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, a determination 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 “school” days, the deadline shall be calculated based on the days that the College is open and holding classes for students (whether in person or virtually). The term “school days” excludes spring break, winter break, and final examination days.

### **11.4 Accessibility Services Requests**

A student, who is a qualified person with a disability under federal law and needs assistance in 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 days from the filing of the Formal Complaint. This timeline assumes that the investigation phase may take approximately 90 days and that the hearing and appeal phase may take approximately 60 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 are not limited to, illness of a party, 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 all documentation related to a Grievance Process, including documents relating to the investigation, hearing, and any appeal, for seven years.

## 12. Definitions Applicable to this Procedure<sup>1</sup>

**Complainant:** The individual who is alleged to be the victim of any prohibited conduct under this Procedure and has filed a Formal Complaint. The term “reporting party” also is used.

**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 of 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 his or her 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 his or her 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 a 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 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.<sup>4</sup>

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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).

<sup>4</sup> “Dating violence” under Texas law is defined in 71.0021 of the Texas Family Code.

**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 an assault against a family member, household member, or a current or past dating partner. An assault consists of:

1. Intentionally, knowingly, or recklessly causing bodily injury to another person;
2. Intentionally or knowingly threatening another person with imminent bodily injury; or
3. Intentionally or knowingly causing physical contact with another that the offender knows or reasonably should know the victim will find provocative or offensive.

A person commits aggravated domestic assault if that person intentionally, knowingly, or recklessly causes serious bodily injury to a family member, household member, or a current or past dating partner, or uses or exhibits a deadly weapon in the course of committing the assault crime.<sup>5</sup>

**Education Program or Activity:** This Procedure applies to conduct that occurs on College-owned or College-leased property or in a College vehicle; during a College-sponsored activity whether on campus or off campus; in a building owned or controlled by a student organization that is officially recognized by the College; or in other instances in which the College exercised substantial control over the alleged perpetrator and the context in which the conduct occurred.

**Formal Complaint:** A complaint filed under Section 9 of this procedure.

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

**Other Inappropriate Conduct:** Conduct on the basis of sex that does not meet federal definitions of sexual harassment, sexual assault, dating violence, domestic violence, or stalking as stated in this Procedure but that is inappropriate for an educational environment. The conduct is subject to College policy if it occurs on campus or within the education programs and activities of the College or if occurs off campus but is likely to adversely impact the College’s education programs and activities or interfere with a student’s ability to participate in or benefit from the College’s education programs and activities. The conduct must be objectively offensive to a reasonable person. The term includes the following:

- i) “Sexual harassment” as defined under the Texas Education Code, sec. 51.251(5). The Texas 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 that the conduct interferes with a student’s ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.
- ii) “Other Inappropriate Conduct” includes, but is not limited to, 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

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<sup>5</sup> See also Texas Penal Code § 22.01; Texas Family Code § 71.004.

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.

iii) “Other Inappropriate Sexual Conduct” includes, but is not limited to, 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.

iv) “Other Inappropriate Sexual Conduct” includes engaging in conduct of a sexual nature that is consensual between two or more parties but that is nonetheless inappropriate in an educational environment, such as engaging in 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 “Reporting Party” 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 Policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

**Prohibited Conduct:** This term collectively refers to the conduct prohibited by this Procedure (Sexual Misconduct, Other Inappropriate Conduct, and Retaliation).

**Retaliation:** Any adverse action (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone because the individual has made a report or filed a Formal Complaint; has supported or provided information in connection with a report or a Formal Complaint; has participated or refused to participate in a Grievance Process under this Policy; or has engaged in other legally protected activities. For students, prohibited retaliation may include, but is not limited to, harassment, an unwarranted grade reduction, exclusion from a College activity, destruction of property, and cyberbullying. For employees, retaliation could include, but is not limited to, a demotion or other adverse employment action that would not have occurred but for the employee’s protected action. Retaliation does not include (i) exercising First Amendment rights or (ii) charging an individual with making a materially false statement in bad faith in the course of a grievance proceeding.

**Reporting Party:** The individual who is alleged to be the victim of any prohibited conduct under this Procedure. The term “complainant” also is sometimes used if the alleged victim has filed a Formal Complaint. For ease of reference, this Procedure uses “Reporting Party” to indicate any alleged victim regardless of whether a Formal Complaint has been filed.

**Respondent:** An individual who has been reported to be the perpetrator of Prohibited Conduct under 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 acts 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 consent of the victim.
- 2) Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- 3) Incest - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 4) Statutory Rape - Sexual intercourse with a person who is under the statutory age of consent.

**Sexual Harassment:** As stated in Title IX regulations (34 C.F.R. section 106.30), sexual harassment under the Title IX Grievance Process is conduct on the basis of 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 and any instance of sexual assault, dating violence, domestic violence, and stalking are considered sexual harassment under this procedure.

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, complaints asserting allegations of "Other Inappropriate Conduct" includes the definition of sexual harassment as stated in the Texas Education Code, sec. 51.251(5).

**Sexual Misconduct:** This term encompasses sexual harassment, sexual assault, dating violence, domestic violence, and stalking as these terms are defined under Title IX regulations and the Clery Act. The terms apply to conduct that occurs in an education program or activity of the College.

**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 the purposes of 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.

Date of SLT Approval	July 27, 2020
Effective Date	August 4, 2020
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