

Update 39 contains (LOCAL) policies that require board action before we can incorporate Update 39 into your college district's Policy On Line manual.

Please notify Community College Services of your policy adoption by completing the electronic Notify TASB of Policy Adoption form* in myTASB. As an alternative option, you may complete, scan, and submit this form via email to pol-support@tasb.org.

232501 Southwest Texas Junior College

Your Name: _____

Your Email: _____

Previous Updates

- I confirm that all updates prior to Update 39 have been adopted. (Visit Local Manual Updates[†] to see updates pending adoption.)

Update 39 Adoption Date: _____

Status (please check one):

- Adopted as presented by TASB—place online immediately
- Adopted with further changes, described below

Policy Changes

If you wish to make changes to policies issued in Update 39, submit those changes with your adoption notification. If you wish to make changes to policies not issued in Update 39, please email those changes directly to your policy consultant, Scott Rizzo.

Changes will be processed as a Local District Update. Your policy consultant may contact you about policy changes if necessary.

If you have questions, please call your policy consultant, Scott Rizzo, at 800-580-1488. * Notify TASB of Policy Adoption: <https://www.tasb.org/apps/PolicyAdmin/>

† Local Manual Updates: <https://www.tasb.org/apps/policyUpdates/index.aspx>

Update 39

Policy On Line[®]
Adoption Notification Form

TASB Community College Services



Localized Policy Manual Update 39

Southwest Texas Junior College

Remember: You can download a PDF of your college district's update packet, annotated copies of the (LOCAL) policies, editable (LOCAL) text, and more on [myTASB¹](#) under Policy Service Resource Library → Local Manual Updates. Need help? Please call 800-580-1488 or email colleges@tasb.org.

Overview

Update 39 to your localized policy manual contains new or revised (LEGAL) policies citing current legal requirements and new or revised (LOCAL) policy recommendations. See the Explanatory Notes for a full listing of the (LEGAL) and (LOCAL) policies affected.

The Update 39 packet contains:

- **Instructions** providing specific information on which policies have been revised, added, or deleted at this update.
- **Explanatory Notes** summarizing and pointing out changes occurring within each policy.
- **Updated policies** reflecting new or replacement materials included in this update.

(LEGAL) vs. (LOCAL) Policies: Remember the Difference

(LEGAL) policies:

- Reflect the ever-changing legal context for governance and management of the community college
- Should inform local decision making
- Should NOT be adopted, only reviewed

(LOCAL) policies:

- Require close attention by both the administration and the board
- Must reflect the practices of the college and the intentions of the board
- May only be changed by board action (adopt, revise, or repeal)

How to Place Policy Changes on the Agenda for Board Action

TASB provides a [sample Board meeting agenda](#) to advise employees and the public of the issues to be addressed, while providing flexibility as to how the meeting is conducted. Community colleges that use the TASB model, including those that use BoardBook, should address Update 39 on the agenda as “Policy Update 39” with two sub-items, one to address the (LEGAL) policies and one to address the (LOCAL) policies.

(LEGAL) policies sub-item:

TASB recommends that the board review, but not adopt, the (LEGAL) policies issued by TASB as part of the update. Review of the (LEGAL) policies may result in discussion about the issues addressed by the revisions. The (LEGAL) policies should, at a minimum, be addressed on the agenda posting as “(LEGAL) policies.” If the board may discuss certain issues addressed by the updated (LEGAL) policies, particularly if those issues are of interest to the public, then, for purposes of discussion, the relevant policy codes, titles, and subtitles should be listed under the sub-item.

(LOCAL) policies sub-item:

Board action on the (LOCAL) policies included in Update 39 must occur within a properly posted, open meeting of the board.

- The (LOCAL) policies should be addressed on the agenda posting as the sub-item “(LOCAL) policies.”
- You may use the “(LOCAL) Policy Action List” provided online in *Local Manual Updates* and include the list under the sub-item, or you may compile a list of (LOCAL) policy codes, titles, and subtitles from the Instruction Sheet and Explanatory Notes, below.
- A suggested motion for board action on the (LOCAL) policies included in Update 39:
“I move that the board add, revise, or delete (LOCAL) policies as recommended by TASB Community College Services and according to the Instruction Sheet for TASB Localized Policy Manual Update 39 [with the following changes:]”

How to Notify Community College Services of Board Action

Notify Community College Services of the board’s action on Update 39 by completing the electronic “[Notify TASB of Policy Adoption](#)” form in myTASB or by using the Update 39 Adoption Notification Form, enclosed, so that the college’s newly adopted policies can be placed in Policy On Line. **If your board adopts changes to the (LOCAL) policies contained in this packet, please notify your policy consultant so that Community College Services can update its records before placing your revised policy in Policy On Line. To help ensure consistency throughout your manual, use the [Board Policy Manual Style Guide](#).²**

How to Keep Minutes

The board’s action on Localized Update 39 must be reflected in board minutes. Your minutes should include:

- The list of proposed (LOCAL) policy actions, such as the Instruction Sheet—annotated to reflect any changes made by the board
- The Explanatory Notes for the update (filed as an attachment to the minutes)
- Copies of new, replaced, or rescinded (LOCAL) policies

How to Maintain Your Historical Record

To construct a separate historical record of the manual, you must track the history of individual (LOCAL) policies. You should maintain a permanent historical record of every (LOCAL) policy adopted, revised, or rescinded by the board. At a minimum, this record should include the following key pieces of information:

- Policy code
- Date of board action
- Text of policy

For more guidance on maintaining this record, please refer to the Community College Administrator's Guide to Policy Management.³

How to Keep Your Administrative Regulations Current

Inspect your administrative procedures and documents—including EXHIBITS, REGULATIONS, handbooks, and guides—that may be affected by Update 39 policy changes.

If you must make changes to the REGULATIONS or EXHIBITS contained in your board policy manual, please notify your policy consultant.

Questions

Questions about the content of this update may be addressed to your assigned policy consultant, Scott Rizzo, at 800-580-1488.

Disclaimer and Copyright

PLEASE NOTE: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional adviser. Consult with your attorney or professional adviser to apply these principles to specific fact situations.

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¹ myTASB portal requiring password: <https://www.tasb.org/apps/CA1/Home/UserApps>

² Board Policy Manual Style Guide: <https://www.tasb.org/services/community-college-services/documents/cc-board-policy-manual-style-guide.pdf>

³ Community College Administrator's Guide to Policy Management:
https://www.tasb.org/Services/Community-College-Services/documents/cc_admin_guide_to_policy.aspx

Instruction Sheet
Community College Localized Policy Manual Update 39

Southwest Texas Junior College

Code	Type	Action To Be Taken	Note
ATTN	(NOTE)	No policy enclosed	See explanatory note
CIA	(LEGAL)	Replace policy	Revised policy
CRA	(LEGAL)	Replace policy	Revised policy
DIAA	(LEGAL)	Replace policy	Revised policy
DIAA	(LOCAL)	Replace policy	Revised policy
FA	(LEGAL)	Replace policy	Revised policy
FFDA	(LEGAL)	Replace policy	Revised policy
FFDA	(LOCAL)	Replace policy	Revised policy
FMA	(LOCAL)	Replace policy	Revised policy

Explanatory Notes

Community College Localized Policy Manual Update 39

Southwest Texas Junior College

ATTN(NOTE)

GENERAL INFORMATION ABOUT THIS UPDATE

Changes at Update 39 are based on the regulations recently issued under Title IX of the Education Amendments of 1972 and effective on August 14, 2020. The update also addresses a recent U.S. Supreme Court case interpreting the scope of the sex discrimination prohibitions under Title VII of the Civil Rights Act of 1964, Bostock v. Clayton County, No. 17-1618, 2020 WL 3146686 (June 15, 2020).

Visit TASB College eLaw for resources to help further understand the new Title IX regulations and to assist with policy development.

CIA(LLEGAL)

EQUIPMENT AND SUPPLIES MANAGEMENT: RECORDS MANAGEMENT

This legally referenced policy has been revised to add to the Note that records retention related to Title IX is addressed at DIAA and FFDA.

CRA(LLEGAL)

TECHNOLOGY RESOURCES: WEBSITE POSTINGS

This legally referenced policy has been revised to add Required Internet Postings regarding the Title IX coordinator, notice of nondiscrimination, and certain Title IX training materials.

DIAA(LLEGAL)

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION: SEX AND SEXUAL VIOLENCE

This legally referenced policy has been revised to reflect the new Title IX regulations.

DIAA(LOCAL)

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION: SEX AND SEXUAL VIOLENCE

This policy was revised at Discrimination to reflect U.S. Supreme Court's holding in Bostock v. Clayton County that the Title VII prohibition on discrimination on the basis of sex applies to discrimination on the basis of gender identity and sexual orientation.

In response to the new Title IX regulations, the overall structure of the policy has been expanded to encompass not only the investigation procedures but also initial disciplinary steps. Recommended revisions include the following:

- To comply with the new definition of *sexual harassment*, Domestic Violence was added to the policy under Sexual Harassment. In addition, Sexual Violence, Dating Violence, and Stalking were brought under the Sexual Harassment heading. Examples of the terms were also added.
- At Disclosure at Event, officials and employees with authority to institute corrective measures must report sexual harassment allegations shared at an event.
- The broad definition of college district official was removed to focus on the Title IX coordinator. Additionally, the Title IX coordinator contact information was amended to reflect that the regulations permit the name or position of the coordinator to be listed instead of both and require the coordinator's email to be published. The option to publish the Title IX/Sexual Misconduct webpage link was added.
- The college district may Consolidate Reports arising from the same facts or circumstances.
- All parties are allowed to select an Advisor to assist during proceedings.
- At Conflict of Interest Prohibited, any person designated as the Title IX coordinator, a deputy Title IX coordinator, an investigator, a decision-maker, or a facilitator must not have a conflict of interest in a given case. They must have completed Training as required by law.

Explanatory Notes

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- At Initial Assessment, the Title IX coordinator must offer supportive measures to the victim and consider any request not to investigate before moving forward with the investigation.
- A report shall not be considered a Formal Complaint under Title IX unless signed by the complainant or the Title IX coordinator.
- The college district must provide Notice to Parties.
- Informal Resolution is only available if a formal complaint is filed under Title IX.
- The steps required to conduct a College District Investigation are discussed. The timeline for Concluding the Investigation is now 30 days.
- Investigations are submitted to a designated decision-maker who decides, as a result of a hearing, if Discipline or Corrective Action is warranted.
- At Dismissal of Complaint, the policy describes circumstances for mandatory and permissive dismissal of a complaint and the required notice.
- More specifics have been added under Appeal, organized by the party bringing the appeal and the reasons for the appeal.
- The list of individuals who must be provided Access to Policy, Procedures, and Related Materials has been expanded.
- Timelines for the various steps have been added throughout the policy.

Additional changes were made for clarity, including the addition of the definitions of *Complainant* and *Respondent*, as well as the definition of *Days* and procedures for the Extension of Timelines. Changes were also made for consistency and policy style.

We also offer a version of this policy that limits the hearing requirements to reports that constitute formal complaints under Title IX. Please contact the college district's policy consultant if the board wishes to review the alternative version.

FA(LEGAL)

EQUAL EDUCATIONAL OPPORTUNITY

This legally referenced policy has been revised to reflect amendments to the Title IX regulations related to Retaliation.

FFDA(LEGAL)

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION: SEX AND SEXUAL VIOLENCE

This legally referenced policy has been revised to reflect the new Title IX regulations.

FFDA(LOCAL)

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION: SEX AND SEXUAL VIOLENCE

In response to the new Title IX regulations, the overall structure of the policy has been expanded to encompass not only the investigation procedures but also initial disciplinary steps. Recommended revisions include the following:

- To comply with the new Title IX definition of *sexual harassment*, Domestic Violence was added to the policy under Sexual Harassment. In addition, Sexual Violence, Dating Violence, and Stalking were also brought under the Sexual Harassment heading. Examples of the terms were also added.
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Explanatory Notes

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- The broad definition of college district official was removed to focus on the Title IX coordinator. Additionally, the Title IX coordinator contact information was amended to reflect that the regulations permit the name or position of the coordinator to be listed instead of both and require the coordinator's email to be published. The option to publish the Title IX/Sexual Misconduct webpage link was added.
- The college district may Consolidate Reports arising from the same facts or circumstances.
- All parties are allowed to have an Advisor to assist during proceedings.
- At Conflict of Interest Prohibited, any person designated as the Title IX coordinator, a deputy Title IX coordinator, an investigator, a decision-maker, or a facilitator must not have a conflict of interest in a given case. They must have completed Training as required by law.
- At Initial Assessment, the Title IX coordinator must offer supportive measures to the victim and consider any request not to investigate before moving forward with the investigation.
- If a victim makes a Request Not to Investigate a complaint, the report shall not be considered a formal complaint under Title IX unless signed by the Title IX coordinator.
- The college district must provide Notice to Parties.
- Informal Resolution is only available if a formal complaint is filed under Title IX.
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We also offer a version of this policy that limits the hearing requirements to reports that constitute formal complaints under Title IX. Please contact the college district's policy consultant if the board wishes to review the alternative version.

FMA(LOCAL)

DISCIPLINE AND PENALTIES: DISCIPLINE PROCEDURE

Reflecting changes made to the organization of policies DIAA and FFDA, described above, an Exception to this policy was added to indicate that reports of sex discrimination and sexual harassment must be submitted in accordance with DIAA and FFDA.

Note: For records retention under the Public Information Act, see GCB. For records retention under Title IX, see DIAA and FFDA.

Local Government Record

A "local government record" means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information-recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government, including a college district, or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:

1. Extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government.
2. Notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience.
3. Blank forms.
4. Stocks of publications.
5. Library and museum materials acquired solely for the purposes of reference or display.
6. Copies of documents in any media furnished to members of the public to which they are entitled under Government Code Chapter 552 (Public Information Act) or other state law.
7. Any records, correspondence, notes, memoranda, or documents, other than a final written agreement described by Government Code 2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

Local Gov't Code 201.003(8)

Board's Responsibilities

The governing body of a local government, including a college district, shall:

EQUIPMENT AND SUPPLIES MANAGEMENT
RECORDS MANAGEMENT

CIA
(LEGAL)

1. Establish, promote, and support an active and continuing program for the efficient and economical management of all local government records;
2. Cause policies and procedures to be developed for the administration of the program under the direction of the records management officer;
3. Facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the local government and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and persons affected by the activities of the local government;
4. Facilitate the identification and preservation of local government records that are of permanent value;
5. Facilitate the identification and protection of essential local government records; and
6. Cooperate with the State Library and Archives Commission in its conduct of statewide records management surveys.

Local Gov't Code 203.021

**Custodians of
Records**

Custodians of records in each local government, including each college district, shall:

1. Cooperate with the records management officer in carrying out the policies and procedures established by the local government for the efficient and economical management of records and in carrying out the requirements of Local Government Code Title 6, Subtitle C;
2. Adequately document the transaction of government business and the services, programs, and duties for which the custodians and their staff are responsible; and
3. Maintain the records in the custodians' care and carry out the preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the local government's records management program and the requirements of Subtitle C and rules adopted under it.

State law relating to the duties, other responsibilities, or record-keeping requirements of a custodian of local government records do not exempt the custodian or the records in the custodian's care from the application of Subtitle C and rules adopted under it and may not be used by the custodian as a basis for refusal to participate in the records management program of the local government

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(LEGAL)

whose establishment is required by Local Government Code Chapter 203.

Local Gov't Code 203.022

**Records
Management Officer**

The governing body of each local government shall designate a records management officer by:

Designation

1. Designating an individual; or
2. Designating an office or position, the holder of which shall be the records management officer.

The name, office, or position of the records management officer shall be entered on the minutes of the governing body. The name or the name and office or position of the records management officer shall be filed by the records management officer with the director and librarian within 30 days after the date of the designation.

The designation of a new individual or a new office or position shall be entered on the minutes and reported by the records management officer to the director and librarian in the same manner as the original designation. If the order designating a records management officer designates an office or position rather than an individual, a new holder of that office or position must file the holder's name with the director and librarian within 30 days after the date of assuming the office or position.

Local Gov't Code 203.025

Duties

The records management officer in each local government shall:

1. Assist in establishing and developing policies and procedures for the records management program for the local government.
2. Administer the records management program and provide assistance to custodians for the purposes of reducing costs and improving the efficiency of recordkeeping.
3. In cooperation with the custodians of the records, prepare the records control schedules and amended schedules required by Local Government Code 203.041 and the list of obsolete records as provided by Local Government Code 203.044.
4. In cooperation with custodians, identify and take adequate steps to preserve local government records of permanent value.
5. In cooperation with custodians, identify and take adequate steps to protect essential local government records.

EQUIPMENT AND SUPPLIES MANAGEMENT
RECORDS MANAGEMENT

CIA
(LEGAL)

6. In cooperation with custodians, ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with the policies and procedures of the local government's records management program and the requirements of Local Government Code Title 6, Subtitle C and rules adopted under it.
7. Disseminate to the governing body and custodians information concerning state laws, administrative rules, and policies of the government relating to local government records.
8. In cooperation with custodians, establish procedures to ensure that the handling of records in any context of the records management program by the records management officer or those under the officer's authority is carried out with due regard for the duties and responsibilities of custodians that may be imposed by law and the confidentiality of information in records to which access is restricted by law.

Local Gov't Code 203.023

Duties of Local Governments

Each local government shall:

1. Submit to the director and librarian the name of the local government's records management officer identified under Local Government Code 203.001 or designated under Local Government Code 203.025 and the name of the new officer in the event of a change;
2. File a plan or an ordinance or order establishing a records management program and any amendments to the plan or ordinance or order with the director and librarian as required by Local Government Code 203.005 and 203.026;
3. Notify the commission at least ten days before destroying a local government record that does not appear on a records retention schedule issued by the commission; and
4. File with the director and librarian a written certification as provided by Local Government Code 203.041 that the local government has prepared a records control schedule that:
 - a. Establishes a retention period for each local government record as required by Local Government Code Chapter 203, Subchapter C; and
 - b. Complies with a local government records retention schedule distributed by the director and librarian under Government Code 441.158 and any other state and federal requirements.

Gov't Code 441.149

EQUIPMENT AND SUPPLIES MANAGEMENT
RECORDS MANAGEMENT

CIA
(LEGAL)

Retention Schedules On or before January 4, 1999, the records management officer shall:

1. Prepare a records control schedule listing the following records and establishing a retention period for each as provided by Local Government Code 203.042:
 - a. All records created or received by the local government or elective county office;
 - b. Any record no longer created or received by the local government or elective county office that is still in its possession and for which the retention period on a records retention schedule issued by the commission has not expired; and
 - c. Any record no longer created or received by the local government or elective county office that is still in its possession and for which the retention period on a records retention schedule issued by the commission has expired but which will not be destroyed as provided by Local Government Code 203.044; and
2. File with the director and librarian a written certification of compliance that the local government or the elective county office has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by the commission.

At the discretion of the records management officer the records control schedule may also list and provide retention periods for material that is excluded from the definition of a local government record by Local Government Code 201.003(8) and exempted records described by Local Government Code 202.001(b) if in the officer's opinion the inclusion of the material or records is necessary to ensure the periodic destruction of the material or records in the interest of efficient records management.

The records management officer shall review the records control schedules of the local government or elective county office and prepare amendments to the schedules as needed to reflect new records created or received by the government or office or revisions to retention periods established in a records retention schedule issued by the commission. The records management officer shall file with the director and librarian a written certification of compliance that the local government or the elective county office has amended the records control schedules to comply with the minimum requirements established on records retention schedules issued by the commission.

The governing body shall require in the ordinance or order establishing the records management program the review or approval of a records control schedule or amended schedule by the officers of the local government as it considers necessary. The records control schedule or amended schedule for an elective county office need only be approved by the elected official in charge of that office.

Records control schedules may be prepared on an office-by-office basis or on a department-by-department basis within each office.

A local government that intends to retain all records permanently or that destroys only those records for which no retention periods have been established in a records retention schedule established under Government Code 441.158 is not required to prepare a records control schedule.

Local Gov't Code 203.041

The records retention schedules adopted in 1 Administrative Code 7.125 shall be considered minimum requirements and shall in no way affect the authority of the governing bodies of local governments to establish longer periods of time for which records of their government are to be retained. The applicable records retention schedules adopted by the State Library and Archives Commission include:

1. Local Schedule GR—Records Common to all Governments;
2. Local Schedule EL—Records of Elections and Voter Registration;
3. Local Schedule TX—Records of Property Taxation; and
4. Local Schedule JC—Records for Public Junior Colleges.

13 TAC 7.123(b), .125

Note: Local government records retention schedules¹ are available on the Texas State Library and Archives Commission website.

**Destruction of
Records**

Records That May
Be Destroyed

A local government record may be destroyed if:

1. The record is listed on a valid records control schedule and either its retention period has expired or it has been micro-filmed or stored electronically in accordance with the requirements of Local Government Code Chapters 204 and 205;

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CIA
(LEGAL)

2. The record appears on a list of obsolete records as provided by Local Government Code 203.044; or
3. The record is not listed on a records retention schedule issued by the commission and the local government provides notice to the commission at least ten days before destroying the record as required by Government Code 441.169.

The following records may be destroyed without meeting the above conditions:

1. Records the destruction or obliteration of which is directed by an expunction order issued by a court pursuant to state law.
2. Records defined as exempt from scheduling or filing requirements by rules adopted by the commission or listed as exempt in a records retention schedule issued by the Commission.

Local Gov't Code 202.001

Exceptions

A local government record the subject matter of which is known by the custodian to be in litigation may not be destroyed until the litigation is settled. A local government record subject to a request under Government Code Chapter 552 may not be destroyed until the request is resolved. *Local Gov't Code 202.002*

**Manner of
Destruction**

A local government record may be destroyed by burning, shredding, pulping, or burial in a landfill or by sale or donation for recycling purposes except that records, including extra identical copies of a local government record, to which public access is restricted under Government Code Chapter 552 or other state law may be destroyed only by burning, pulping, or shredding.

A local government that sells or donates records for recycling purposes shall establish procedures for ensuring that the records are rendered unrecognizable as local government records by the recycler.

The director and librarian may approve other methods of destruction that render the records unrecognizable as local government records.

Local Gov't Code 202.003, .006

**Alienation of
Records**

A local government record may be sold or donated, loaned, transferred, or otherwise passed out of the custody of a local government to any public institution of higher education, public museum, public library, or other public entity with the approval of the local government's records management officer and after the expiration

of the record's retention period under the local government's records control schedule.

A local government record may not be sold or donated (except for the purposes of recycling), loaned, transferred, or otherwise passed out of the custody of a local government to any private college or university, private museum or library, private organization of any type, or an individual, except with the consent of the director and librarian and after the expiration of its retention period under the local government's records control schedule.

A records management officer or custodian may temporarily transfer a local government record to a person for the purposes of microfilming, duplication, conversion to electronic media, restoration, or similar records management and preservation procedures.

Local Gov't Code 202.004

Right of Recovery

In accordance with Local Government Code 202.005, the governing body may demand and receive from any person any local government record in private possession created or received by the local government the removal of which was not authorized by law.

Local Gov't Code 202.005(a)

Preservation of Records

A governmental body, including a college district board of trustees, shall determine a time for which information that is not currently in use will be preserved, subject to any applicable rule or law governing the destruction and other disposition of local government records or public information. *Gov't Code 552.004*

Microfilming

Any local government record may be maintained on microfilm in addition to or instead of paper or other media, subject to the requirements of Local Government Code Chapter 204 and rules adopted under it by the State Library and Archives Commission.

Local Gov't Code 204.002-.003

Electronic Storage

Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of Local Government Code Chapter 205 and rules adopted under it by the State Library and Archives Commission. *Local Gov't Code 205.002-.003*

Penalties

Destruction or
Alienation of Record

An officer or employee of a local government commits an offense if the officer or employee knowingly or intentionally violates this subtitle or rules adopted under it by destroying or alienating a local government record in contravention of Local Government Code Title 6, Subtitle C or by intentionally failing to deliver records to a successor in office as provided by Local Government Code 201.006(a).

Local Gov't Code 202.008

EQUIPMENT AND SUPPLIES MANAGEMENT
RECORDS MANAGEMENT

CIA
(LEGAL)

Federal
Investigations and
Bankruptcy

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under U.S.C. Title 11 (bankruptcy), or in relation to or contemplation of any such matter or case, shall be fined, imprisoned not more than 20 years, or both. *18 U.S.C. 1519*

**Chapter 176
Disclosures**

A records administrator shall:

1. Maintain a list of local government officers of the local governmental entity and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Local Government Code 176.006 [see CFE]; and
2. Maintain the statements and questionnaires that are required to be filed under Local Government Code Chapter 176 [see BBFA, CFE, and DBD] in accordance with the local governmental entity's records retention schedule.

Local Gov't Code 176.0065

Records
Administrator

"Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under Local Government Code Chapter 176 and perform related functions. *Local Gov't Code 176.001(5)*

¹ Local Government Retention Schedules:
<https://www.tsl.texas.gov/slr/recordspubs/localretention.html>

Note: The following is an index of website posting requirements that are addressed in the legally reference material of the policy manual. The list is not all-inclusive. The list does not address postings that are required in response to a specific incident, postings required under special circumstances, or postings required under administrative procedures of an agency.

Required Internet Postings

A college district that maintains an internet website shall post the following:

1. The college district's Compact With Texans under Government Code 2114.006. [See AFA]
2. On the first frame of the homepage and in a font that is larger than the font of the majority of the text on the home page, an accessible link to the college district's online resumes maintained on the Coordinating Board's internet website under Education Code 51A.003. [See AFA]
3. The cost of attendance for a first-time entering full-time student in accordance with the uniform standards prescribed by the commissioner, under Education Code 61.0777 and 19 Administrative Code 21.2222. [See AFA]
4. In a prominent location that is not more than three hyperlinks from the website's home page, a link to the postsecondary and career information posted on the Texas Education Agency's internet website, under Education Code 7.040. [See AFA]
5. Each elected officer, under Government Code 2051.152. [See BB]
6. The date and location of the next board member election, under Government Code 2051.152. [See BBB]
7. An election notice, under Election Code 85.007. [See BBB]
8. For at least one year before the election day, the requirements and deadline for filing for candidacy, under Government Code 2051.152. [See BBB]
9. Conflicts disclosure statements and questionnaires, under Local Government Code 176.009. [See BBFA, CFE]
10. Notice of a board meeting and, if the college district contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more, the agenda for a board meeting, under Government Code 551.056. [See BD]

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11. Any written agenda and related supplemental written materials for a board meeting, as well as a broadcast of the board meeting followed by an archived version of that broadcast, if the junior college district has a total student enrollment of more than 20,000 in any semester of the preceding academic year, under Government Code 551.1282. [See BD]
12. During the 21 days before the election, prominently and together with the notice of the election, the contents of the proposition, and any sample ballot prepared for the election, a debt obligation election order, under Election Code 4.003. [See CAD]
13. In a political subdivision with at least 250 registered voters, a voter information document, under Government Code 1251.052. [See CAD]
14. Prominently on the home page in the form prescribed by the comptroller, tax rate, estimated interest and fund balance, and debt obligation information, under Tax Code 26.04. [See CAI]
15. On the home page the prescribed statement if the college district proposes to increase the amount of taxes to fund maintenance and operation expenditures, under Tax Code 26.05. [See CAI]
16. Notice of a required public hearing on a tax rate increase, under Tax Code 26.06 and 26.065. [See CAI]
17. Information about the college district, including the board, the budget, and the tax rate, in a format prescribed by the comptroller, under Tax Code 26.18. [See CAI, BB, CC, CDC, and GC]
18. The current version of the guidelines and criteria governing tax abatement agreements, under Tax Code 312.002. [See CAIB]
19. If the website is generally accessible, a link to the state expenditure database, under Government Code 2054.126. [See CDA]
20. A copy of the college district's financial transactions, under Education Code 51.9741. [See CDA]
21. An annual debt obligation report or link to where the information is located and the contact information for the college district's main office, under Local Government Code 140.008. [See CDA]

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22. The internal audit plan and annual report, under Government Code 2102.009. [See CDC]
23. If adopted, the college district's policy regarding the maintenance, storage, administration, and disposal of epinephrine auto-injectors on the institution's campus, under Education Code 51.882. [See CGE]
24. A college district shall report its energy usage information on a publicly accessible internet website with an interface designed for ease of navigation, if available, under Government Code 2265.001. [See CH]
25. In a prominent location, the code of conduct for the college district's officers, employees, and agents under, 20 U.S.C. 1094. [See DBD]
26. Information regarding college district employees and employee compensation, as provided by Government Code 659.026. [See DEA]
27. Information regarding a gift, grant, donation, or other consideration from a person that the person designated to be used as a salary supplement, and related conflict of interest provisions, as provided by Government Code 659.0201. [See DEA]
28. The campus expression policies, under Education Code 51.9315. [See DGC, FLA, and GD]
29. Prominently displayed, the contact information required to be listed for the Title IX coordinator and the notice of nondiscrimination, under 34 C.F.R. 106.8(b)(2). [See DIAA and FFDA]
30. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, under 34 C.F.R. 106.45(b)(10). [See DIAA and FFDA]
31. On a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the homepage, the policy on sexual harassment, sexual assault, dating violence, and stalking, under Education Code 51.282(b) and 19 Administrative Code 3.4(b). [See DIAA and FFDA]
32. A report concerning the reports of sexual harassment, sexual assault, dating violence, or stalking received by the college district, under Education Code 51.253(c)-(d) and 19 Administrative Code 3.6(c)-(d). [See DIAA and FFDA]

33. The end-of-course student evaluations of faculty according to a plan developed under Education Code 51.974(h) and 19 Administrative Code 4.227(10) and 4.228(e). [See DLA]
34. The International Standard Book Number (ISBN) and retail price information of required and recommended college textbooks and supplemental materials for each course listed in the institution's course schedule used for preregistration and registration purposes as provided by 20 U.S.C. 1015b. [See EDA]
35. Information about each undergraduate classroom course offered for credit not later than the seventh day after the first day of classes for the semester or other academic term during which the course is offered as provided by Education Code 51.974 and 19 Administrative Code 4.227 to 4.228. [See EFA]
36. The college district's policy to grant undergraduate course credit to entering freshmen students who have successfully completed the International Baccalaureate Diploma Program, who have achieved required scores on one or more examinations in the Advanced Placement Program or the College-Level Examination Program, or who have successfully completed one or more courses offered through concurrent enrollment in high school and at an institution of higher education with the application materials, under Education Code 51.968. [See EGA]
37. Guidelines addressing the practices of the college district regarding the transfer of course credit, under Education Code 61.830. [See EGA]
38. A list of work-study employment opportunities accessible through a clearly identifiable link that appears in a prominent place on the financial aid page, under Education Code 56.080 and 19 Administrative Code 4.229 and 22.129. [See FEB]
39. The name of and contact information for the college district's liaison officer for students who are or were in foster care and information regarding support services and other resources available to the students, under Education Code 51.9356. [See FF]
40. The mental health resources available to students at the college district on a dedicated website, under Education Code 51.9193. [See FFCA]
41. In a prominent location, a report on hazing committed on or off campus by an organization registered with or recognized

by the college district, under Education Code 51.936. [See FLBC]

42. The college district's contact information, under Government Code 2051.151 and 2051.152(a) and Tax Code 26.18. [See GC]

Optional Internet Postings

A college district that maintains an internet website may broadcast an open meeting over the internet, under Government Code 551.128. [See BD]

Geospatial Data Products

"Geospatial data product" means a document, computer file, or internet website that contains geospatial data; a map; or information about a service involving geospatial data or a map. *Gov't Code 2051.101(1)*

Notice

A governmental entity, including a college district, shall include a notice on each geospatial data product that:

1. Is created or hosted by the governmental entity;
2. Appears to represent property boundaries; and
3. Was not produced using information from an on-the-ground survey conducted by or under the supervision of a registered professional land surveyor or land surveyor authorized to perform surveys under laws in effect when the survey was conducted.

The notice must be in substantially the following form: "This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries."

The notice may include language further defining the limits of liability of a geospatial data product producer; apply to a geospatial data product that contains more than one map; or for a notice that applies to a geospatial data product that is or is on an internet website, be included on a separate page that requires the person accessing the website to agree to the terms of the notice before accessing the geospatial data product.

Gov't Code 2051.102

Exemption

A governmental entity is not required to include the notice on a geospatial data product that:

1. Does not contain a legal description, a property boundary monument, or the distance and direction of a property line;
2. Is prepared only for use as evidence in a legal proceeding;

3. Is filed with the clerk of any court; or
4. Is filed with the county clerk.

Gov't Code 2051.103

Note: This policy addresses employee complaints of sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation targeting employees. For additional legally referenced material relating to this subject matter, see DAA(LEGAL). For sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation targeting students, see FFDA.

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Section I: Title IX

Definitions

Complainant

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*

Respondent

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*

Education Program or Activity

For the purposes of 34 C.F.R. 106.44, 34 C.F.R. 106.30, and 34 C.F.R. 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. *34 C.F.R. 106.44(a)*

Sexual Harassment

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

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
2. 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 recipient’s education program or activity; or
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

34 C.F.R. 106.30(a)

Formal Complaint

“Formal complaint” means a document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

The phrase “document filed by a complainant” means a document or electronic submission, such as by electronic mail or through an online portal provided for this purpose by the recipient, that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

34 C.F.R. 106.30(a)

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*Actual
Knowledge*

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient.

“Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX coordinator as described in 34 C.F.R. 106.8(a).

34 C.F.R. 106.30(a)

*Supportive
Measures*

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.

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.

The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

34 C.F.R. 106.30(a)

Notice of
Nondiscrimination

Each recipient must notify persons entitled to a notification under 34 C.F.R. 106.8(a) that the recipient does not discriminate on the basis of sex in the education program or activity that it operates,

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and that it is required by Title IX and 34 C.F.R. Part 106 not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, unless 34 C.F.R. Part 106, Subpart C does not apply, and that inquiries about the application of Title IX and 34 C.F.R. Part 106 to such recipient may be referred to the recipient's Title IX coordinator, to the Assistant Secretary, or both. *34 C.F.R. 106.8(b)(1)*

Title IX Coordinator Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under 34 C.F.R. Part 106, which employee must be referred to as the "Title IX coordinator." *34 C.F.R. 106.8(a)*

Grievance Procedures A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by 34 C.F.R. Part 106 and a grievance process that complies with 34 C.F.R. 106.45 for formal complaints. These requirements apply only to sex discrimination occurring against a person in the United States. *34 C.F.R. 106.8(c-d); North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982)*

Process for Formal Complaints
Conflict of Interest Prohibited A recipient's grievance process must require that any individual designated by a recipient as a Title IX coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. *34 C.F.R. 106.45(b)*

Training A recipient must ensure that Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in 34 C.F.R. 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in 34 C.F.R. 106.45(b)(6).

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A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in 34 C.F.R. 106.45(b)(5)(vii).

Any materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

34 C.F.R. 106.45(b)

Time Frames	A recipient's grievance process must include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. <i>34 C.F.R. 106.45(b)</i>
Presumption of Responsibility Prohibited	A recipient's grievance process must include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. <i>34 C.F.R. 106.45(b)</i>
Information Subject to Privilege	A recipient's grievance process must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. <i>34 C.F.R. 106.45(b)</i>
Evaluation of Evidence and Credibility Determinations	A recipient's grievance process must require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness. <i>34 C.F.R. 106.45(b)</i>
Standard of Evidence	A recipient's grievance process must state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against em-

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	<p>ployees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment. <i>34 C.F.R. 106.45(b)</i></p>
Supportive Measures	<p>A recipient's grievance process must describe the range of supportive measures available to complainants and respondents. <i>34 C.F.R. 106.45(b)</i></p>
Sanctions and Remedies	<p>A recipient's grievance process must treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with 34 C.F.R. 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in 34 C.F.R. 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.</p> <p>A recipient's grievance process must describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility.</p> <p><i>34 C.F.R. 106.45(b)</i></p>
Appeals	<p>A recipient's grievance process must include the procedures and permissible bases for the complainant and respondent to appeal. <i>34 C.F.R. 106.45(b)</i></p>
Additional Procedures	<p>Any provisions, rules, or practices other than those required by Section 106.45 that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in 34 C.F.R. 106.30, must apply equally to both parties. <i>34 C.F.R. 106.45(b)</i></p>
Reporting	<p>Any person may report sex discrimination, including sexual harassment, whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX coordinator, or by any other means that results in the Title IX coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX coordinator. <i>34 C.F.R. 106.8(a)</i></p>

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*Formal Complaint
Filing*

A formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX coordinator under 34 C.F.R. 106.8(a), and by any additional method designated by the recipient. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

Where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or otherwise a party under 34 C.F.R. Part 106 or under 34 C.F.R. 106.45, and must comply with the requirements of 34 C.F.R. Part 106, including 34 C.F.R. 106.45(b)(1)(iii). *34 C.F.R. 106.30(a)*

Consolidation of
Complaints

A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. *34 C.F.R. 106.45(b)(4)*

Notice of
Allegations

Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

1. Notice of the recipient's grievance process that complies with 34 C.F.R. 106.45, including any informal resolution process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in 34 C.F.R. 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under Section 106.30, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under 34 C.F.R. 106.45(b)(5)(iv), and may inspect and review evidence under Section 106.45(b)(5)(vi). The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

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If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to item 2, above, the recipient must provide notice of the additional allegations to the parties whose identities are known.

34 C.F.R. 106.45(b)(2)

Response to Sexual
Harassment

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

A recipient's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with 34 C.F.R. 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

The U.S. Department of Education may not deem a recipient to have satisfied the recipient's duty to not be deliberately indifferent under 34 C.F.R. Part 106 based on the recipient's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment. *34 C.F.R. 106.44(a)*

*Response to
Formal Complaint*

In response to a formal complaint, a recipient must follow a grievance process that complies with 34 C.F.R. 106.45. With or without a formal complaint, a recipient must comply with 34 C.F.R. 106.44(a).

A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

34 C.F.R. 106.44(b), .45(a)

Informal Resolution

A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with 34 C.F.R. 106.45. Similarly, a recipient may not require the

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parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient:

1. Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

34 C.F.R. 106.45(9)

Investigation

When investigating a formal complaint and throughout the grievance process, a recipient must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section.
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

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3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
7. Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing, if a hearing is required under this section or otherwise provided, or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 C.F.R. 106.45(b)(5)

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Hearings	<p>For postsecondary institutions, the recipient's grievance process must provide for a live hearing. <i>34 C.F.R. 106.45(b)(6)(i)</i></p>
<i>Conduct of Hearing</i>	<p>Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.</p> <p>At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.</p> <p><i>34 C.F.R. 106.45(b)(6)(i)</i></p>
<i>Cross-Examination</i>	<p>At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under <i>34 C.F.R. 106.45(b)(5)(iv)</i> to otherwise restrict the extent to which advisors may participate in the proceedings.</p> <p>If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.</p> <p><i>34 C.F.R. 106.45(b)(6)(i)</i></p>
Relevance	<p>Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.</p> <p>Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.</p> <p><i>34 C.F.R. 106.45(b)(6)(i)</i></p>

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Refusal to
Submit to Cross-
Examination

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. 34 C.F.R. 106.45(b)(6)(i)

Recording

Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. 34 C.F.R. 106.45(b)(6)(i)

Determination
Regarding
Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in 34 C.F.R. 106.45(b)(1)(vii). The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 C.F.R. 106.30;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the recipient's code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

The recipient must provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an

appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX coordinator is responsible for effective implementation of any remedies.

34 C.F.R. 106.45(b)(7)

Dismissal of
Complaint

The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 34 C.F.R. 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or 34 C.F.R. Part 106; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted pursuant to this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

34 C.F.R. 106.45(b)(3)

Appeals

A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A recipient may offer an appeal equally to both parties on additional bases. As to all appeals, the recipient must:

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1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in 34 C.F.R. 106.45(b)(1)(iii);
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

34 C.F.R. 106.45(b)(8)

Confidentiality

The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a)*

Retaliation
Prohibited

No recipient or other 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 34 C.F.R. Part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Part 106. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or Part 106, constitutes retaliation. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under 34 C.F.R. 106.8(c).

The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under 34 C.F.R. Part 106 does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

34 C.F.R. 106.71

Removal or Leave

Nothing in 34 C.F.R. Part 106 precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Nothing in 34 C.F.R. Part 106, Subpart D precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with 34 C.F.R. 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

34 C.F.R. 106.44(c)-(d)

Publication

*Title IX
Coordinator and
Notice of Non-
discrimination*

The recipient must notify applicants for admission and employment, students, parents, or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX coordinator. *34 C.F.R. 106.8(a)*

Each recipient must prominently display the contact information required to be listed for the Title IX coordinator and the policy described in 34 C.F.R. 106.8(b)(1) on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under 34 C.F.R. 106.8(a).

A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on

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the basis of sex except as such treatment is permitted by Title IX or 34 C.F.R. Part 106.

34 C.F.R. 106.8(b)(2)

*Grievance
Procedures and
Process*

A recipient must provide to persons entitled to a notification under 34 C.F.R. 106.8(a) notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond. *34 C.F.R. 106.8(c)*

*Training
Materials*

A recipient must make the materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website, or if the recipient does not maintain a website, the recipient must make these materials available upon request for inspection by members of the public. *34 C.F.R. 106.45(b)(10)*

Recordkeeping

A recipient must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under 34 C.F.R. 106.45 (b)(6)(i), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

For each response required under 34 C.F.R. 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The

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documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

34 C.F.R. 106.45(b)(10)

Section II: State Law

Definitions

*Dating Violence,
Sexual Assault,
and Stalking*

"Dating violence," "sexual assault," and "stalking" have the same meanings assigned by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. Section 1092(f)(6)(A). *Education Code 51.251(2); 19 TAC 3.3(c)*

*Sexual
Harassment*

"Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:

1. In the employment context, unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment; or
2. In the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities.

Education Code 51.251(5); 19 TAC 3.3(e)

Employee

"Employee of a postsecondary educational institution" does not include a student enrolled at the institution. *Education Code 51.251(3)*

*Course and
Scope of
Employment*

"Course and scope of employment" means an employee performing duties in the furtherance of the institution's interests. *19 TAC 3.3(b)*

Sexual Assault
Policy

Each postsecondary educational institution, including each college district, shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each enrolled student and each employee of the institution and have the policy approved by the institution's governing body. The policy must include:

1. Definitions of prohibited behavior.
2. Sanctions for violations.
3. Protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking that complies with the electronic reporting requirement in 19 Administrative Code 3.7.

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4. Interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking pending the institution's disciplinary process, including protection from retaliation, and any other accommodations or supportive measures available to those victims at the institution. This section is not intended to limit an institution's ability to implement accommodations to others as needed.
5. A statement regarding:
 - a. 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;
 - b. The right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and
 - c. The right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

As part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under this section, each postsecondary educational institution shall:

1. To the greatest extent practicable based on the number of counselors employed by the institution, ensure that each alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking and any other person who reports such an incident are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and
2. Notwithstanding any other law, allow an alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, and stalking to drop a course in which both parties are enrolled without any academic penalty.

Education Code 51.282(a); 19 TAC 3.4(a), (d)(2)(C)

Review

Each postsecondary educational institution shall review its sexual harassment, sexual assault, dating violence, and stalking policy at least each biennium and revise the policy as necessary and obtain approval from the institution's governing board. *Education Code 51.282(f); 19 TAC 3.4(e)*

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Distribution

Each postsecondary educational institution shall make its policy on sexual harassment, sexual assault, dating violence, and stalking available to students, faculty, and staff members by:

1. Including the policy in the student handbook and personnel handbook or the institution's equivalent(s); and
2. Creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's homepage.

Education Code 51.282(b); 19 TAC 3.4(b)

Responsible
Employee

Each postsecondary educational institution shall designate one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq and inform each student enrolled at the institution of the designated responsible employees. *Education Code 51.290(a); 19 TAC 3.14(a)*

Reporting
*Employee
Reporting
Required*

An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.

The employee is required to report an incident regardless of when or where the incident occurred.

Institutions may establish additional reporting avenues to comply with this section provided that the reports are promptly routed to the Title IX coordinator or deputy Title IX coordinator.

Education Code 51.252(a); 19 TAC 3.5(a)

Exception from
Reporting

A person is not required to make a report under this section concerning:

1. An incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking;
2. An incident of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational institution or by a student organization affiliated with the institution; or

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3. A sexual harassment, sexual assault, dating violence, or stalking incident in which the person has either learned of the incident during the course of his or her institution's review or process or has confirmed with the person or office overseeing the review or process, that the incident has been previously reported.

Education Code 51.252(d); 19 TAC 3.5(d)

Contents of
Report

The report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident. *Education Code 51.252(b); 19 TAC 3.5(b)*

Limitations on
Reporting

*Designated
Confidential
Employees*

Each postsecondary educational institution shall designate one or more employees as persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking and inform each student enrolled at the institution of the designated confidential employees.

A confidential employee designated under this section may not disclose any communication made by a student to the employee unless the student consents to the disclosure or the employee is required to make the disclosure under 19 Administrative Code 3.5(c), state law, or federal law.

Absent consent from the reporting student, an employee designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking shall only state the type of incident reported and may not include any information that would violate a student's expectation of privacy.

Education Code 51.252(c), .290(a), (c); 19 TAC 3.5(c), .14

*Confidential
Employees
Under Other
Law*

Absent consent from the reporting individual, an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking under circumstances that render the employee's communications confidential or privileged under other law shall only state the type of incident reported and may not include any information that would violate an expectation of privacy. *Education Code 51.252(c); 19 TAC 3.5(c)*

*Medical
Providers*

Absent consent from the victim(s), an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking in the course and scope of employment as a health-care provider, mental health-care provider, or other medical provider shall only state the type of incident reported

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and may not include any information that would violate an expectation of privacy. *Education Code 51.291(d); 19 TAC 3.5(c)*

*Multiple
Confidential
Employees*

When multiple confidential employees receive information about the same incident (e.g., student health center or counseling center), only a single report stating the type of incident is required. *19 TAC 3.5(c)*

*Reporting
Under Other
Law*

These limitations on disclosure do not affect the employee's duty to report an incident under any other law, including but not limited to, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f), Family Code 261.101, or Health and Safety Code 611.004. *Education Code 51.290(c); 19 TAC 3.5(c)*

Failure to Report
or False Report

A person commits an offense if the person is required to make a report under Education Code 51.252 and knowingly fails to make the report or with the intent to harm or deceive, knowingly makes a report under Education Code 51.252 that is false.

A postsecondary educational institution shall terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedure to have committed the offense.

Education Code 51.255(a), (c); 19 TAC 3.8

*Electronic
Reporting*

Each postsecondary educational institution, including each college district, shall provide an option for electronic reporting to the institution by an enrolled student or an employee of the institution of an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must:

1. Allow for anonymous reporting; and
2. Be easily accessible through a clearly identifiable link on the institution's website home page.

A protocol for reporting sexual assault adopted under Education Code 51.282 must comply with this section.

Education Code 51.283(a)–(c); 19 TAC 3.7

*Reporting on
Reports*

Title IX
Coordinator

Not less than once every three months, the Title IX coordinator of a postsecondary educational institution shall submit to the institution's chief executive officer a written report on the reports received for the institution's reporting period under 19 Administrative Code 3.5, including information regarding:

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1. The investigation of those reports;
2. The disposition, if any, of any disciplinary processes arising from those reports; and
3. The reports for which the institution determined not to initiate a disciplinary process, if any.

The Title IX coordinator or deputy Title IX coordinator of a postsecondary educational institution shall immediately report to the institution's chief executive officer an incident reported to the coordinator under Section 3.5 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

Education Code 51.253(a)–(b); 19 TAC 3.6(a)–(b)

Chief Executive
Officer

At least once annually, during each fall or spring semester, the chief executive officer of a postsecondary educational institution shall submit to the institution's governing body and post on the institution's internet website a report concerning the reports received under 19 Administrative Code 3.5. The chief executive officer report may not identify any person and must include:

1. The number of reports received under Section 3.5;
2. The number of investigations conducted as a result of those reports;
3. The disposition, if any, of any disciplinary processes arising from those reports;
4. The number of those reports for which the institution determined not to initiate a disciplinary process, if any; and
5. Any disciplinary actions taken under 19 Administrative Code 3.8.

If for any semester a postsecondary educational institution has fewer than 1,500 enrolled students, the chief executive officer of the institution shall submit and post a report required for that semester only if more than five reports were received under 19 Administrative Code 3.5 during that semester.

Education Code 51.253(c)–(d); 19 TAC 3.6(c)–(d)

Investigations

*Request Not to
Investigate*

If an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution requests the institution not to investigate the alleged incident, the institution may investigate the alleged incident in a manner that complies with the confidentiality requirements under Education Code 51.291 and 19 Administrative Code 3.17. In

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determining whether to investigate the alleged incident, the institution shall consider:

1. The seriousness of the alleged incident;
2. Whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;
3. Whether the alleged incident poses a risk of harm to others; and
4. Any other factors the institution determines relevant.

If a postsecondary educational institution decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking based on the alleged victim's request not to investigate, the institution shall take any reasonable steps the institution determines necessary and consistent with the institution's policy and applicable law to protect the health and safety of the institution's community in relation to the alleged incident.

Education Code 51.285(a)–(b); 19 TAC 3.9(a)–(b)

*Notice of
Decision*

A postsecondary educational institution shall inform an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking who requests the institution not to investigate the alleged incident of the institution's decision whether to investigate the alleged incident. *Education Code 51.285(c); 19 TAC 3.9(c)*

Confidentiality

Unless waived in writing by the person, the identity of a person described below is confidential and not subject to disclosure under the Public Information Act (PIA) and may be disclosed only to:

1. Persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary to conduct an investigation or the report or any related hearings;
2. A law enforcement officer as necessary to conduct a criminal investigation of the report;
3. A health-care provider in an emergency, as determined necessary by the institution;
4. The person or persons alleged to have perpetrated the incident, to the extent required by other law; and
5. Potential witnesses to the incident as necessary to conduct an investigation of the report and to the extent required by other law.

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The protections provided by this section apply to:

1. An alleged victim;
2. A person who reports an incident to an institution;
3. A person who sought guidance from the institution concerning an incident;
4. A person who participated in the institution's investigation of an incident; or
5. A person who is alleged in a report made to an institution to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking, if after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

Education Code 51.256, .291(a), (c); 19 TAC 3.17

Retaliation
Prohibited
Employees

A postsecondary educational institution may not discipline or otherwise discriminate against an employee who in good faith makes a report as required by 19 Administrative Code 3.5 or cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee. *Education Code 51.257(a); 19 TAC 3.18*

Exception

The prohibition does not apply to an employee who:

1. Reports an incident of sexual harassment, sexual assault, dating violence, and stalking perpetrated by the employee; or
2. Cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident described by Education Code 51.252(a).

Education Code 51.257(b); 19 TAC 3.18(b)

Any Person

A person acting in good faith who reports or assists in the investigation of a report of an incident described by 19 Administrative Code 3.5 or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's policy or code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment. This provision does not apply to a person who perpetrates or

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assists in the perpetration of the incident reported under Section 3.5.

Education Code 51.254; 19 TAC 3.5(e)–(f)

Awareness

*Orientation on
Policy*

Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term of enrollment at the institution. The institution shall establish the format and content of the orientation. The orientation may be provided online and must include the statements described by 19 Administrative Code 3.4(a)(5). *Education Code 51.282(c); 19 TAC 3.4(c)*

*Prevention and
Outreach
Program*

Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking for enrolled students and employees of the institution. The program must:

1. Address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a public awareness campaign; a victim empowerment program; primary prevention; bystander intervention; and risk reduction; and
2. Provide students information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking, including the name, office location, and contact information of the institution's Title IX coordinator, by:
 - a. Emailing the information to each student at the beginning of each semester or other academic term; and
 - b. Including the information in the institution's orientation, which may be provided online.).

Education Code 51.282(d); 19 TAC 3.4(d)

Equal Access

In implementing the requirements under 19 Administrative Code Chapter 3, Subchapter A, a postsecondary educational institution shall, to the greatest extent practicable, ensure equal access for students enrolled at or employees of the institution who are persons with disabilities. The institution shall make reasonable efforts to consult with a disability services office of the institution, advocacy groups for people with disabilities, and other relevant stakeholders to assist the institution with complying with the institution's duties under this section. *Education Code 51.293; 19 TAC 3.16*

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Memoranda of
Understanding

To facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the institution, a postsecondary educational institution shall enter into one or more memoranda of understanding with an entity from one or more of the following categories:

1. Local law enforcement agencies;
2. Sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and
3. Hospitals or other medical resource providers.

Education Code 51.289; 19 TAC 3.13

Compliance

The chief executive officer of each postsecondary educational institution shall annually certify in writing to the Coordinating Board, in October of each year, that the institution is in substantial compliance with Education Code Chapter 51, Subchapter E-2. The Coordinating Board shall make available to institutions a required template for the certification, which satisfies the requirements of this section.

If the Coordinating Board determines that a postsecondary educational institution is not in substantial compliance with Subchapter E-2 and Education Code Chapter 51, Subchapter E-3, the Coordinating Board may assess an administrative penalty against the institution in an amount not to exceed \$2 million. In determining the amount of the penalty, the Coordinating Board shall consider the nature of the violation and the number of students enrolled at the institution.

If the Coordinating Board assesses an administrative penalty against a postsecondary educational institution, the Coordinating Board shall provide to the institution written notice of the Coordinating Board's reasons for assessing the penalty. A postsecondary educational institution assessed an administrative penalty may appeal the penalty in the manner provided by Government Code Chapter 2001. A postsecondary educational institution may not pay the administrative penalty using state or federal money.

Education Code 51.258(a)–(e), .292(a)–(d); 19 TAC 3.19(a)–(e)

Note: This policy addresses complaints of sex and gender discrimination, sexual harassment, sexual violence, dating violence, domestic violence, stalking, and retaliation targeting employees. For additional legally referenced material relating to discrimination, harassment, and retaliation, see DAA(LEGAL). For sex discrimination, sexual harassment, sexual violence, dating violence, domestic violence, stalking, and retaliation targeting students, see FFDA.

**Statement of
Nondiscrimination**

The College District prohibits discrimination, including harassment, against any employee on the basis of sex. Retaliation against anyone involved in the complaint process is a violation of College District policy and is prohibited.

Definitions

Employee

Solely for purposes of this policy, the term “employee” includes former employees, applicants for employment, and unpaid interns.

Discrimination

Discrimination against an employee is defined as conduct directed at an employee on the basis of sex that adversely affects the employee’s employment.

In accordance with law, discrimination on the basis of sex includes discrimination on the basis of biological sex, gender identity, sexual orientation, gender stereotypes, or any other prohibited basis related to sex.

Sexual Harassment

Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to the conduct is either explicitly or implicitly a condition of an employee’s employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or
2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee’s work performance or creates an intimidating, threatening, hostile, or offensive work environment.

Sexual Violence

Sexual violence is a form of sexual harassment. Sexual violence includes physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol or due to an intellectual or other disability.

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Dating Violence “Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence “Domestic violence” means violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- Any other member of the victim’s family as defined by state law;
- Any other current or former member of the victim’s household as defined by state law;
- A person in a dating relationship with the victim as defined by state law; or
- Any other person who acts against the victim in violation of the family violence laws of this state or the jurisdiction where the conduct occurs.

Stalking “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

1. “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.
2. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.

Examples Examples of sexual harassment of an employee may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; sexual assault as defined by law; offensive or derogatory language

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directed at another person's gender identity; and other sexually motivated conduct, communication, or contact.

Examples may also include forms of dating violence, domestic violence, or stalking, such as physical or sexual assaults; name-calling; put-downs; or threats directed at the employee, the employee's family members, or members of the employee's household; destroying the employee's property; threatening to commit suicide or homicide if the employee ends the relationship; tracking the employee; attempting to isolate the employee from friends and family; threatening an employee's spouse or partner; or encouraging others to engage in these behaviors.

Prohibited Conduct In this policy, the term "prohibited conduct" includes discrimination, sexual harassment, dating violence, domestic violence, stalking, and retaliation as described by this policy, even if the behavior does not rise to the level of unlawful conduct.

Complainant In this policy, the term "complainant" refers to an employee who is alleged to have experienced prohibited conduct.

Respondent In this policy, the term "respondent" refers to a person who is alleged to have committed prohibited conduct.

Confidential Employee A "confidential employee" is a person who holds a professional license requiring confidentiality, such as a counselor or medical provider, who is supervised by such a person, or a person who is a nonprofessional counselor or advocate designated in administrative procedures as a confidential source.

Reporting Procedures A victim of prohibited conduct has the right to report the incident to the College District and to receive a prompt and equitable resolution of the report.

Reporting by Alleged Victim An employee who believes that he or she has experienced prohibited conduct may report the alleged acts to his or her immediate supervisor, to the Title IX coordinator, or to the College President or designee.

Reports against the Title IX coordinator may be directed to the College President. A report against the College President may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation. An employee shall not be required to report prohibited conduct to the person alleged to have committed the conduct.

Alternatively, the employee may report electronically through the College District's website.

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A victim of a crime has the right to choose whether to report the crime to law enforcement, to be assisted by the College District in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

It is important that a victim of prohibited conduct go to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident.

Reporting by Other
Employees

Any employee who believes that another employee has experienced prohibited conduct, regardless of when or where the incident occurred, shall immediately report the alleged acts to the Title IX coordinator. Additionally, the employee may report to the College President or designee.

A report against the College President must also be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

Exceptions

Disclosure at
Event

A person who received the information solely from a disclosure at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational institution or by an employee organization affiliated with the institution is not required to report the prohibited conduct unless the person has authority to institute corrective measures on behalf of the College District.

Employee
Subject to
Confidentiality
Rules

Absent the employee's consent, or unless required by law, a confidential employee shall only be required to disclose the type of incident reported and may not disclose information that would violate the employee's expectation of privacy. If multiple confidential employees receive information about the same alleged incident, then only one report disclosing the type of incident must be submitted.

Prior Report

A person who has either learned of an incident of prohibited conduct during the course of the College District's review or process, or has confirmed with the person or office overseeing the review or process that the incident has been previously reported, is not required to report the prohibited conduct.

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment, may be directed to the Title IX coordinator. The College District designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended, and related state and federal laws:

Title IX Oscar Garcia, Director of Human Resources/Title
Coordinator: IX Administrator

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Address: 2401 Garner Field Road, Uvalde, TX 78801

Telephone: (830) 591-7330

Email: [Title IX Coordinator email¹](#)

Webpage: [Title IX/Sexual Misconduct webpage²](#)

Responsible Employees	All employees, with the exception of confidential employees, are designated as responsible employees for purposes of compliance with Title IX.
Timely Reporting	A failure to immediately report prohibited conduct may impair the College District's ability to investigate and address the conduct.
Consolidate Reports	When the allegations underlying two or more complaints arise out of the same facts or circumstances, the College District may consolidate the complaints.
Advisor	Each party to a complaint may be assisted by an advisor of the party's choice who may participate in the proceedings in a manner consistent with College District procedures.
Conflict of Interest Prohibited	No person designated as the Title IX coordinator, a deputy Title IX coordinator, an investigator, a decision-maker, or a facilitator of an informal resolution process shall have a conflict of interest or bias.
Training	A person designated as the Title IX coordinator, a deputy Title IX coordinator, an investigator, a decision-maker, or a facilitator of an informal resolution process shall receive training as required by law and College District procedures.
Days	"Days" shall mean College District business days, unless otherwise noted. In calculating timelines under this policy, the day a document is filed is "day zero." The following business day is "day one."
Extension of Timelines	Timelines established by this policy and associated procedures may be subject to a limited extension if good cause, as defined in this policy and College District regulations, exists. The College District shall promptly provide written notice to the parties of an extension and the reason for the extension. A limited delay determined to be necessary so as not to impede a criminal or regulatory investigation shall constitute good cause for an extension of timelines established by this policy and associated procedures.
Investigation of the Report	The College District may request, but shall not insist upon, a written report. If a report is made orally, the Title IX coordinator or designee shall reduce the report to written form.

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Initial Assessment	<p>Upon receipt or notice of a report, the Title IX coordinator shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the Title IX coordinator shall promptly offer supportive measures to the complainant. The Title IX coordinator shall explain the process for filing a formal complaint and assess any request not to investigate. If the College District moves forward with the investigation, the Title IX coordinator shall immediately provide notice to the known parties to the complaint.</p> <p>If the Title IX coordinator determines that the allegations, if proven, would not constitute prohibited conduct as defined by this policy but may constitute a violation of other College District rules or regulations, the Title IX coordinator shall refer the complaint for consideration under the appropriate policy.</p>
<i>Request Not to Investigate</i>	<p>The complainant may request that the College District not investigate the allegations. If the complainant requests that the allegations not be investigated, in deciding whether to initiate the investigation, the College District must consider the factors described by law and any other factors the College District considers relevant.</p> <p>The College District shall promptly notify the complainant of the decision regarding whether it will conduct the investigation. If the College District decides not to investigate the allegations, the College District shall take reasonable steps to protect the health and safety of the College District community.</p>
Formal Complaint	<p>To be considered a formal complaint under Title IX, the complainant or the Title IX coordinator must sign the written report.</p>
Notice to Parties	<p>The notice to the parties must describe the allegations and the formal and informal options for resolution of the complaint. The notice must state that the respondent is presumed not responsible until a determination regarding responsibility is made. The notice must also include information regarding the option to select an advisor, the opportunity to inspect and review evidence, and the prohibition on knowingly making false statements or submitting false information during the investigation and any ensuing proceedings.</p> <p>If the allegations are subsequently amended, the College District shall provide an updated notice reflecting the new allegations.</p>
Informal Resolution	<p>The College District may offer to the parties a process for the informal resolution of a formal complaint as defined by law. If the parties voluntarily agree in writing to participate in informal resolution of a formal complaint, the Title IX coordinator shall determine within three days if informal resolution is appropriate for the complaint. If</p>

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the Title IX coordinator determines that informal resolution is appropriate, then the Title IX coordinator or designee may facilitate that resolution within ten days. If the Title IX coordinator does not determine informal resolution to be appropriate, then the complaint will be subject to the formal resolution process.

Formal Resolution

If the complaint is not subject to the informal resolution process, the Title IX coordinator shall authorize or undertake an investigation.

Supportive Measures

If appropriate and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the Title IX coordinator shall promptly provide supportive measures intended to prevent prohibited conduct, protect the safety of the parties and others, and protect the parties from retaliation prior to the completion of the investigation. Examples of possible supportive measures include work accommodations, such as leaves of absence or administrative leave; mutual restrictions on contact between the parties; counseling and health services; and increased security and monitoring of certain areas of the campus.

College District Investigation

The investigation may be conducted by the Title IX coordinator or a designee or by a third party designated by the College District, such as an attorney. When appropriate, the supervisor shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the complainant, the respondent, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

The parties shall be provided an equal opportunity to present witnesses and evidence and to inspect and review any directly related evidence obtained by the College District so that the parties may meaningfully respond during the investigation process. The parties expected to participate in an investigative interview or other meeting shall be provided written notice in enough time to prepare to participate.

At least ten days prior to the completion of the investigation report, the College District must send each party and the party's advisor evidence subject to inspection and review. The parties may submit a written response for consideration by the investigator.

Concluding the Investigation

The investigation shall be completed within a reasonable time, not to exceed 30 days from the date of the report.

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	<p>The investigator shall prepare a written report of the investigation. The investigation report shall be filed with the Title IX coordinator within five days following the completion of the investigation.</p>
<p>Notification of the Report</p>	<p>The Title IX coordinator shall provide the investigation report, within the extent permitted by law, to the complainant and the respondent promptly following receipt. The parties shall be given ten days to respond to the report.</p>
<p>College District Action</p>	<p>The Title IX coordinator shall submit the investigation report to the vice president of finance promptly after receipt of the parties' response but no later than the expiration of the parties' deadline to respond.</p> <p>The vice president of finance or designee shall summon the parties for a hearing to be held within a reasonable time, not to exceed ten days. The hearing shall be conducted in accordance with law and College District procedures.</p> <p>After the hearing, the vice president of finance or designee shall determine whether each individual allegation of prohibited conduct occurred using a preponderance of evidence standard and determine the appropriate disciplinary or corrective action. In making the determination, the vice president of finance or designee shall evaluate all relevant evidence objectively and shall not make credibility assessments based on a person's status as the complainant, the respondent, or a witness. The vice president of finance or designee shall create a written determination regarding responsibility in accordance with law and College District procedures within five days following the hearing and submit the determination to the parties simultaneously.</p>
<p>Disciplinary or Corrective Action</p>	<p>If the vice president of finance or designee determines that prohibited conduct occurred, the College District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.</p> <p>The College District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.</p> <p>Examples of disciplinary or corrective action may include:</p> <ul style="list-style-type: none">• Implementing the disciplinary measures described in DH and the DM series for employees or FM for students;• Providing a training program for those involved in the complaint;

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- Providing a comprehensive education program for the College District community;
- Providing counseling for the victim and the student who engaged in prohibited conduct;
- Permitting the victim or student engaged in the prohibited conduct to drop a course in which they both are enrolled without penalty;
- Conducting follow-up inquiries to determine if any new incidents or any instances of retaliation have occurred;
- Involving employees in efforts to identify problems and improve the College District climate;
- Increasing staff monitoring of areas where prohibited conduct has occurred;
- Reaffirming the College District's policy against discrimination and harassment; and
- Taking other actions described in College District regulations.

Exception

The College District shall minimize attempts to require a complainant to resolve the problem directly with the person who engaged in the harassment; however, if that is the most appropriate resolution method, the College District shall be involved in an appropriate manner.

Improper Conduct

If the vice president of finance or designee determines that improper conduct occurred that did not rise to the level of prohibited conduct, the College District may take disciplinary action in accordance with College District policy and procedures or other corrective action reasonably calculated to address the conduct.

Dismissal of Complaint

Mandatory Dismissal

An allegation presented as a formal complaint under Title IX is subject to the mandatory dismissal procedures under law.

Permissive Dismissal

Any complaint may be dismissed at any time on request of a complainant. The Title IX coordinator must first assess the request in accordance with this policy at Request Not to Investigate, above.

A complaint may also be dismissed if specific circumstances prevent the College District from gathering evidence sufficient to reach a determination as to the complaint or allegations.

Notice of Dismissal

Upon dismissal of a complaint, the Title IX coordinator or the vice president of finance or designee shall provide the parties written notice of the dismissal.

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Confidentiality To the greatest extent possible, consistent with law, the College District shall respect the privacy of the complainant or the respondent or a person who makes a report or serves as a witness. Limited disclosures may be necessary to carry out the purposes of this policy and associated regulations and to comply with applicable law.

Retaliation The College District prohibits retaliation against any person for the purpose of interfering with a right or privilege under this policy; the complainant; or a person who, in good faith, makes a report or complaint, serves as a witness, or otherwise participates or refuses to participate in an investigation, proceeding, or hearing under this policy. This prohibition does not apply to discipline of a person who perpetrated or assists in the perpetration of the prohibited conduct.

A person who is alleged to have experienced retaliation may pursue a claim under this policy or policy FFDA, as appropriate.

Examples Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance.

Failure to Report and False Claims An employee who fails to make a required report or an employee or student who intentionally makes a false claim, offers a false statement, or refuses to cooperate with a College District investigation regarding prohibited conduct shall be subject to appropriate disciplinary action.

Appeal If the vice president of finance or designee determines that a contract employee committed prohibited conduct that warrants suspension without pay or termination mid-contract, the vice president of finance or designee shall inform the employee in writing of the determination, and a Board hearing shall be scheduled in accordance with DMAA.

Discipline or
Corrective Action
Employees
Suspension
Without Pay or
Termination of
Contract
Employees

Other Action If the vice president of finance or designee determines that the employee committed prohibited conduct that warrants other discipline or corrective action, the vice president of finance or designee shall inform the employee that the employee may appeal the determination within ten days in accordance with DGBA beginning at Level Three.

Students
Suspension If the vice president of finance or designee determines that a student committed prohibited conduct that warrants a suspension, the official shall forward the determination and all evidence collected

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during the investigation and hearing to the College President. A conference shall be scheduled within ten days of the notice of determination in accordance with FMA, beginning at Appeal to College District Administration.

Expulsion If the vice president of finance or designee determines that the student committed prohibited conduct that warrants expulsion, the official shall forward the determination and all evidence collected during the investigation and hearing to the College President to schedule an expulsion hearing before the Board in accordance with FMA.

Other Action If the vice president of finance or designee determines that the student committed prohibited conduct that warrants other discipline or corrective action, the vice president of finance or designee shall inform the student that the student may appeal the determination within ten days in accordance with FMA, beginning at Appeal to College District Administration.

Other Appeals All other appeals related to this policy may be submitted through the applicable grievance policy beginning at the appropriate level. [See DGBA(LOCAL) for employees, FLD(LOCAL) for students, and GB(LOCAL) for community members]

Complaints Filed with State or Federal Agencies A party shall be informed of any right to file a complaint with appropriate state or federal agencies.

Records Retention Retention of records shall be in accordance with the College District's records retention procedures. [See CIA]

Access to Policy, Procedures, and Related Materials Information regarding this policy and any accompanying procedures, as well as relevant educational and resource materials concerning the topics discussed in this policy, shall be distributed to applicants for admission and employment and annually to College District employees, students, and parents or guardians of dual credit students in compliance with law and in a manner calculated to provide easy access and wide distribution, such as through electronic distribution and inclusion in the employee and student handbooks and other major College District publications. Information regarding the policy, procedures, and related materials and any materials used to train a person designated as the Title IX coordinator, a deputy Title IX coordinator, an investigator, a decision-maker, or a facilitator shall also be prominently published on the College District's website on a dedicated page accessible through a clear link on the homepage, taking into account applicable legal requirements. Copies of the policy and procedures shall be readily available at the College District's administrative offices and shall be distributed to an employee who makes a report.

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¹ Title IX Coordinator email: <mailto:osgarcia@swtjc.edu>

² Title IX/Sexual Misconduct webpage:

<https://www.swtjc.edu/about/campus-safety/sexual-misconduct.html>

Note: For complaints of discrimination, harassment, and retaliation on the basis of a protected characteristic, see FFDA and FFDB.

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EQUAL EDUCATIONAL OPPORTUNITY

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Section I: Generally No governmental entity, including a college district, shall deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const. Amend. XIV*

An officer or employee of a political subdivision, including a college district, who is acting or purporting to act in an official capacity may not, because of the student's race, religion, color, sex, or national origin, refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the political subdivision; refuse to grant a benefit to the person; or impose an unreasonable burden on the person. *Civ. Prac. and Rem. Code 106.001(a)*

Section II: Religious Freedom A governmental entity, including a college district, shall make no law prohibiting the free exercise of religion. *U.S. Const. Amends. I, XIV*

A government agency, including a college district, may not substantially burden a student's free exercise of religion, unless the government agency demonstrates that the application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. and Rem. Code 110.003*

Association with a Religious Organization Notwithstanding any other law, a governmental entity, including a college district, may not take any adverse action against any person, as defined by Government Code 2400.001(4), based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

"Adverse action" means any action taken by a governmental entity to:

1. Withhold, reduce, exclude, terminate, or otherwise deny any grant, contract, subcontract, cooperative agreement, loan, scholarship, license, registration, accreditation, employment, or other similar status from or to a person;
2. Withhold, reduce, exclude, terminate, or otherwise deny any benefit provided under a benefit program from or to a person;
3. Alter in any way the tax treatment of, cause any tax, penalty, or payment assessment against, or deny, delay, or revoke a tax exemption of a person;
4. Disallow a tax deduction for any charitable contribution made to or by a person;
5. Deny admission to, equal treatment in, or eligibility for a degree from an educational program or institution to a person; or

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6. Withhold, reduce, exclude, terminate, or otherwise deny access to a property, educational institution, speech forum, or charitable fundraising campaign from or to a person.

Gov't Code 2400.001(1), .002 [See GA]

**Section III:
Discrimination on
the Basis of Sex**

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. *20 U.S.C. 1681; 34 C.F.R. 106.31*

Educational programs and activities include:

1. Housing. *34 C.F.R. 106.32*
2. Comparable facilities. *34 C.F.R. 106.33*
3. Access to course offerings. *34 C.F.R. 106.34*
4. Counseling. *34 C.F.R. 106.36*
5. Financial assistance. *34 C.F.R. 106.37*
6. Employment assistance to students. *34 C.F.R. 106.38*
7. Health and insurance benefits and services. *34 C.F.R. 106.39*
8. Athletics. *34 C.F.R. 106.41*

**Pregnancy and
Marital Status**

A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. *34 C.F.R. 106.40(a)*

Sexual Harassment

Sexual harassment of students is discrimination on the basis of sex under Title IX. *Franklin v. Gwinnett County Schools, 503 U.S. 60 (1992)* [See also FFDA]

*Definition of
Sexual
Harassment*

Sexual harassment of students is conduct that is so severe, pervasive, and objectively offensive that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school. Sexual harassment does not include simple acts of teasing and name-calling, however, even when the comments target differences in gender. *Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)*

*Employee—
Student Sexual
Harassment*

An official of an educational entity who has authority to address alleged harassment by employees on the entity's behalf shall take corrective measures to address the harassment or abuse. *Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998)*

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<i>Student–Student Sexual Harassment</i>	An educational entity must reasonably respond to known student-on-student harassment where the harasser is under the entity's disciplinary authority. <i>Davis v. Monroe County Bd. of Educ.</i> , 526 U.S. 629 (1999)
Clery Act—Campus Sexual Assault Programs	<p>An institution's Clery Act annual security report [see GCC] must include a statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking and of procedures that the institution will follow when one of these crimes is reported. The statement must include:</p> <ol style="list-style-type: none">1. A description of the institution's educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking, as described below at Programs to Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking;2. Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about:<ol style="list-style-type: none">a. The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;b. How and to whom the alleged offense should be reported;c. Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to:<ol style="list-style-type: none">(1) Notify proper law enforcement authorities, including on-campus and local police;(2) Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and(3) Decline to notify such authorities; andd. Where applicable, the rights of victims and the institution's responsibilities for orders of protection, "no-contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution;3. Information about how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will:

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- a. Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim, as defined in the Violence Against Women Act of 1994, 42 U.S.C. 13925(a)(20); and
 - b. Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures;
4. A statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community;
 5. A statement that the institution will provide written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures. The institution must make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;
 6. An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as described below at Procedures for Institutional Disciplinary Action; and
 7. A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in items 1 through 6 of this list.

20 U.S.C. 1092(f)(8); 34 C.F.R. 668.46(b)(11)

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Programs to Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking

An institution must include in its annual security report a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking. The statement must include:

1. A description of the institution's primary prevention and awareness programs for all incoming students and new employees, which must include:
 - a. A statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking, as those terms are defined in 34 C.F.R. 668.46(a) [see Definitions];
 - b. The definition of "dating violence," "domestic violence," "sexual assault," and "stalking" in the applicable jurisdiction [see Penal Code 22.011, 22.021, 42.072; Family Code 71.0021, 71.004];
 - c. The definition of "consent," in reference to sexual activity, in the applicable jurisdiction;
 - d. A description of safe and positive options for bystander intervention;
 - e. Information on risk reduction; and
 - f. The information described in 34 C.F.R. 668.46(b)(11) and 34 C.F.R. 668.46(k)(2); and
2. A description of the institution's ongoing prevention and awareness campaigns for students and employees, including information described at item 1.

An institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking must include, at a minimum, the information required to be included in the statement.

34 C.F.R. 668.46(j)

Awareness Programs

"Awareness programs" means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration. *34 C.F.R. 668.46(j)(2)(i)*

Bystander Intervention

"Bystander intervention" means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional

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structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene. 34 C.F.R.

668.46(j)(2)(ii)

Ongoing
Prevention and
Awareness
Campaigns

“Ongoing prevention and awareness campaigns” means programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution and including information described in item 1, above. 34 C.F.R. 668.46(j)(2)(iii)

Primary
Prevention
Programs

“Primary prevention programs” means programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions. 34 C.F.R. 668.46(j)(2)(iv)

Risk Reduction

“Risk reduction” means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence. 34 C.F.R. 668.46(j)(2)(v)

*Procedures for
Institutional
Disciplinary
Action*

An institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as defined in 34 C.F.R. 668.46(a), and that:

1. Describes each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking;
2. Describes the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking;

3. Lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking; and
4. Describes the range of protective measures that the institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking;
5. Provides that the proceedings will:
 - a. Include a prompt, fair, and impartial process from the initial investigation to the final result;
 - b. Be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - c. Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
 - d. Not limit the choice of adviser or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties; and
 - e. Require simultaneous notification, in writing, to both the accuser and the accused, of:
 - (1) The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;
 - (2) The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;
 - (3) Any change to the result; and
 - (4) When such results become final.

34 C.F.R. 668.46(k)

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Compliance with 34 C.F.R. 668.46(k) does not constitute a violation of Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g. *34 C.F.R. 668.46(l)*

Prompt, Fair,
and Impartial
Proceeding

“Prompt, fair, and impartial proceeding” includes a proceeding that is:

1. Completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay;
2. Conducted in a manner that:
 - a. Is consistent with the institution's policies and transparent to the accuser and accused;
 - b. Includes timely notice of meetings at which the accuser or accused, or both, may be present; and
 - c. Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and
3. Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

34 C.F.R. 668.46(k)(3)(i)

Adviser

“Adviser” means any individual who provides the accuser or accused support, guidance, or advice. *34 C.F.R. 668.46(k)(3)(ii)*

Proceeding

“Proceeding” means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings. Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim. *34 C.F.R. 668.46(k)(3)(iii)*

Result

“Result” means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution. Notwithstanding FERPA, the result must also include the rationale for the result and the sanctions. *34 C.F.R. 668.46(k)(3)(iv)*

Definitions

Dating Violence

“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature

with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse and dating violence does not include acts covered under the definition of domestic violence.

For the purposes of complying with the requirements of this section and 34 C.F.R. 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

34 C.F.R. 668.46(a)

Domestic
Violence

"Domestic violence" is a felony or misdemeanor crime of violence committed:

1. By a current or former spouse or intimate partner of the victim;
2. By a person with whom the victim shares a child in common;
3. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
4. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
5. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

For the purposes of complying with the requirements of this section and 34 C.F.R. 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

34 C.F.R. 668.46(a)

Programs to
Prevent Dating
Violence,
Domestic
Violence, Sexual
Assault, and
Stalking

"Programs to prevent dating violence, domestic violence, sexual assault, and stalking" means comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that:

1. Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and

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2. Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees, as defined in 34 C.F.R. 668.46(j)(2).

34 C.F.R. 668.46(a)

Sexual Assault

“Sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting (UCR) program and included in Appendix A of 34 C.F.R. Part 668, Subpart D. *34 C.F.R. 668.46(a)*

Stalking

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress.

For the purposes of this definition:

1. 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.
2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

34 C.F.R. 668.46(a)

**Section IV:
Discrimination on
the Basis of Race,
Color, or National
Origin**

No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which 34 C.F.R. Part 100 applies.

A recipient under any program to which Part 100 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

1. Deny an individual any service, financial aid, or other benefit provided under the program;
2. Provide any service, financial aid, or other benefit to an individual that is different, or is provided in a different manner, from that provided to others under the program;

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3. Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
4. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
5. Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition that individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;
6. Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so that is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in 34 C.F.R. 100.3(c)); or
7. Deny a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.

A recipient, in determining the types of services, financial aid, or other benefits, or facilities that will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

42 U.S.C. 2000d; 34 C.F.R. 100.3(a)-(b)

**Section V:
Discrimination on
the Basis of Age**

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance. *42 U.S.C. 6102; 34 C.F.R. 110.10*

Exceptions

*Normal Operation
or Statutory
Objective*

A recipient is permitted to take an action otherwise prohibited by 34 C.F.R. 110.10 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably

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takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

1. Age is used as a measure or approximation of one or more other characteristics;
2. The other characteristic or characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;
3. The other characteristic or characteristics can be reasonably measured or approximated by the use of age; and
4. The other characteristic or characteristics are impractical to measure directly on an individual basis.

34 C.F.R. 110.12

*Reasonable
Factors Other
Than Age*

A recipient is permitted to take an action otherwise prohibited by 34 C.F.R. 110.10 that is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective. *34 C.F.R. 110.13*

*Special Benefits
for Children and
the Elderly*

If a recipient operating a program or activity provides special benefits to the elderly or to children, the use of age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of 34 C.F.R. 110.12. *34 C.F.R. 110.16*

Affirmative Action

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age. *34 C.F.R. 110.15*

Notice

A recipient shall notify its beneficiaries, in a continuing manner, of information regarding the provisions of the Act and the associated regulations. *34 C.F.R. 110.25(b)*

**Section VI:
Discrimination on
the Basis of
Disability**

ADA

Under the Americans with Disabilities Act (ADA), no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, including a college district, or be subjected to discrimination by any such entity. A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known

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disability of an individual with whom the individual or entity is known to have a relationship or association. *42 U.S.C. 12132; 28 C.F.R. 35.130*

Section 504 Under Section 504 of the Rehabilitation Act, no otherwise qualified individual with a disability shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. *29 U.S.C. 794(a)*

Disability "Disability" means, with respect to an individual:

1. A physical or mental impairment that substantially limits one or more major life activities of an individual;
2. A record of having such an impairment; or
3. Being regarded as having such an impairment.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The term "disability" does not include:

1. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
2. Compulsive gambling, kleptomania, or pyromania; or
3. Psychoactive substance use disorders resulting from current illegal use of drugs.

42 U.S.C. 12102(1), (4)(C)–(D); 28 C.F.R. 35.108(a), (d), (g)

Regarded as Having Such an Impairment

An individual meets the requirement of being "regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. *42 U.S.C. 12102(3)(A); 28 C.F.R. 35.108(f)*

Transitory and Minor

Item 3 in the definition of "Disability," above, ("regarded as having such an impairment") shall not apply to impairments that are transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less. *42 U.S.C. 12102(3)(B); 28 C.F.R. 35.108(d)(1)(ix), (f)(2)*

Mitigating Measures

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative

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effects of mitigating measures such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy or supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; learned behavioral or adaptive neurological modifications; or psychotherapy, behavioral therapy, or physical therapy.

The ameliorative effects of mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

“Ordinary eyeglasses and contact lenses” are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

“Low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

42 U.S.C. 12102(4)(E); 28 C.F.R. 35.108(d)(1)(viii), (4)

*Major Life
Activities*

“Major life activities” include, but are not limited to:

1. Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and
2. The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

In determining whether an impairment substantially limits a major life activity, the term “major” shall not be interpreted strictly to create a demanding standard. Whether an activity is a major life activity is not determined by reference to whether it is of central importance to daily life.

42 U.S.C. 12102(2); 28 C.F.R. 35.108(c)–(d)

*Physical or
Mental
Impairment*

“Physical or mental impairment” means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs,

respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

2. Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

Physical or mental impairment includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Physical or mental impairment does not include homosexuality or bisexuality.

28 C.F.R. 35.108(b)

Qualified Individual
with a Disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the college district. *42 U.S.C. 12131(2); 28 C.F.R. 35.104*

*Individual with a
Disability*

"Individual with a disability" means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use. *28 C.F.R. 35.104*

Student with a
Disability

A "student with a disability" is one who has a physical or mental impairment that substantially limits one or more of the student's major life activities, has a record of having such an impairment, or is being regarded as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

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An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

A student meets the requirement of being "regarded as" having an impairment if the student establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less.

29 U.S.C. 705(20)(B); 42 U.S.C. 12102(1), (3)-(4)

Reasonable
Modification

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

A public entity is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of "disability" at 28 C.F.R. 35.108(a)(1)(iii).

28 C.F.R. 35.130(b)(7)

Communications

A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public, and companions with disabilities are as effective as communications with others. A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. In determining what types of auxiliary aids or services are necessary, a public entity shall give primary consideration to the requests of the individual with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. *28 C.F.R. 35.160*

*Auxiliary Aids
and Services*

"Auxiliary aids and services" include:

1. Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written

notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

2. Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods for making visually delivered materials available to individuals who are blind or have low vision;
3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions.

28 C.F.R. 35.104

*Limits of
Required
Modification*

Title 28 C.F.R. Chapter I, Part 35, Subpart E does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. *28 C.F.R. 35.164*

Direct Threat

The ADA does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of the public entity when that individual poses a direct threat to the health or safety of others.

“Direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services as provided below.

28 C.F.R. 35.104

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In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

1. The nature, duration, and severity of the risk;
2. The probability that the potential injury will actually occur; and
3. Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

28 C.F.R. 35.139

Services Inventory

The Coordinating Board shall maintain an inventory of all postsecondary educational programs and services provided for persons with intellectual and developmental disabilities by institutions of higher education. The Coordinating Board shall:

1. Post the inventory on the Coordinating Board's Internet website in an easily identifiable and accessible location;
2. Submit the inventory to TEA for inclusion in the transition and employment guide under Education Code 29.0112; and
3. Update the inventory at least once every two years.

At times prescribed by the Coordinating Board, each institution of higher education, including each college district, shall report to the Coordinating Board all programs and services described above provided by that institution.

Education Code 61.0663

**Section VII:
Retaliation**

No recipient of federal financial assistance or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Title IX, or Section 504 or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under 34 C.F.R. Parts 100, 104, or 106. *34 C.F.R. 100.7(e) (Title VI), 104.61 (Section 504), 106.71 (Title IX)*

**Section VIII:
Handgun License as
Proof of
Identification**

A person may not deny the holder of a concealed handgun license issued under Government Code Chapter 411, Subchapter H access to goods, services, or facilities, except as provided by Transportation Code 521.460 (regarding motor vehicle rentals) or in regard to the operation of a motor vehicle, because the holder has or

presents a concealed handgun license rather than a driver's license or other acceptable form of personal identification.

This section does not affect the requirement under Government Code 411.205 that a person present a driver's license or identification certificate in addition to a concealed handgun license.

Business and Commerce Code 506.001

Note: This policy addresses complaints of sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation targeting students. For additional legally referenced material relating to discrimination, harassment, and retaliation, including the Clery Act, see FA(LEGAL). For sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation targeting employees, see DIAA.

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FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION
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Section I: Title IX

Definitions

Complainant

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*

Respondent

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*

Education Program or Activity

For the purposes of 34 C.F.R. 106.44, 34 C.F.R. 106.30, and 34 C.F.R. 106.45, "education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. *34 C.F.R. 106.44(a)*

Sexual Harassment

"Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. 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 recipient's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

34 C.F.R. 106.30(a)

Formal Complaint

"Formal complaint" means a document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

The phrase "document filed by a complainant" means a document or electronic submission, such as by electronic mail or through an online portal provided for this purpose by the recipient, that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

34 C.F.R. 106.30(a)

*Actual
Knowledge*

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient.

“Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX coordinator as described in 34 C.F.R. 106.8(a).

34 C.F.R. 106.30(a)

*Supportive
Measures*

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.

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.

The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

34 C.F.R. 106.30(a)

*Notice of
Nondiscrimination*

Each recipient must notify persons entitled to a notification under 34 C.F.R. 106.8(a) that the recipient does not discriminate on the basis of sex in the education program or activity that it operates,

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and that it is required by Title IX and 34 C.F.R. Part 106 not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, unless 34 C.F.R. Part 106, Subpart C does not apply, and that inquiries about the application of Title IX and 34 C.F.R. Part 106 to such recipient may be referred to the recipient's Title IX coordinator, to the Assistant Secretary, or both. *34 C.F.R. 106.8(b)(1)*

Title IX Coordinator Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under 34 C.F.R. Part 106, which employee must be referred to as the "Title IX coordinator." *34 C.F.R. 106.8(a)*

Grievance Procedures A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by 34 C.F.R. Part 106 and a grievance process that complies with 34 C.F.R. 106.45 for formal complaints. These requirements apply only to sex discrimination occurring against a person in the United States. *34 C.F.R. 106.8(c)-(d)*

Process for Formal Complaints
Conflict of Interest Prohibited A recipient's grievance process must require that any individual designated by a recipient as a Title IX coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. *34 C.F.R. 106.45(b)*

Training A recipient must ensure that Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in 34 C.F.R. 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in 34 C.F.R. 106.45(b)(6).

A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in 34 C.F.R. 106.45(b)(5)(vii).

Any materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

34 C.F.R. 106.45(b)

Time Frames	A recipient's grievance process must include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. <i>34 C.F.R. 106.45(b)</i>
Presumption of Responsibility Prohibited	A recipient's grievance process must include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. <i>34 C.F.R. 106.45(b)</i>
Information Subject to Privilege	A recipient's grievance process must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. <i>34 C.F.R. 106.45(b)</i>
Evaluation of Evidence and Credibility Determinations	A recipient's grievance process must require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness. <i>34 C.F.R. 106.45(b)</i>
Standard of Evidence	A recipient's grievance process must state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against em-

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	<p>ployees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment. <i>34 C.F.R. 106.45(b)</i></p>
Supportive Measures	<p>A recipient's grievance process must describe the range of supportive measures available to complainants and respondents. <i>34 C.F.R. 106.45(b)</i></p>
Sanctions and Remedies	<p>A recipient's grievance process must treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with 34 C.F.R. 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in 34 C.F.R. 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.</p> <p>A recipient's grievance process must describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility.</p> <p><i>34 C.F.R. 106.45(b)</i></p>
Appeals	<p>A recipient's grievance process must include the procedures and permissible bases for the complainant and respondent to appeal. <i>34 C.F.R. 106.45(b)</i></p>
Additional Procedures	<p>Any provisions, rules, or practices other than those required by Section 106.45 that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment, as defined in 34 C.F.R. 106.30, must apply equally to both parties. <i>34 C.F.R. 106.45(b)</i></p>
Reporting	<p>Any person may report sex discrimination, including sexual harassment, whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX coordinator, or by any other means that results in the Title IX coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX coordinator. <i>34 C.F.R. 106.8(a)</i></p>

*Formal Complaint
Filing*

A formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX coordinator under 34 C.F.R. 106.8(a), and by any additional method designated by the recipient. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

Where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or otherwise a party under 34 C.F.R. Part 106 or under 34 C.F.R. 106.45, and must comply with the requirements of 34 C.F.R. Part 106, including 34 C.F.R. 106.45(b)(1)(iii).

34 C.F.R. 106.30(a)

Consolidation of
Complaints

A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. *34 C.F.R. 106.45(b)(4)*

Notice of
Allegations

Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

1. Notice of the recipient's grievance process that complies with 34 C.F.R. 106.45, including any informal resolution process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in 34 C.F.R. 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under Section 106.30, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under 34 C.F.R. 106.45(b)(5)(iv), and may inspect and review evidence under Section 106.45(b)(5)(vi). The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

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If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to item 2, above, the recipient must provide notice of the additional allegations to the parties whose identities are known.

34 C.F.R. 106.45(b)(2)

Response to Sexual
Harassment

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

A recipient's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with 34 C.F.R. 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

The U.S. Department of Education may not deem a recipient to have satisfied the recipient's duty to not be deliberately indifferent under 34 C.F.R. Part 106 based on the recipient's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

34 C.F.R. 106.44(a)

*Response to
Formal Complaint*

In response to a formal complaint, a recipient must follow a grievance process that complies with 34 C.F.R. 106.45. With or without a formal complaint, a recipient must comply with 34 C.F.R. 106.44(a).

A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

34 C.F.R. 106.44(b), .45(a)

Informal Resolution

A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent

with 34 C.F.R. 106.45. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient:

1. Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

34 C.F.R. 106.45(9)

Investigation

When investigating a formal complaint and throughout the grievance process, a recipient must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section.
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

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3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
7. Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing, if a hearing is required under this section or otherwise provided, or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 C.F.R. 106.45(b)(5)

Hearings	<p>For postsecondary institutions, the recipient's grievance process must provide for a live hearing. <i>34 C.F.R. 106.45(b)(6)(i)</i></p>
<i>Conduct of Hearing</i>	<p>Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.</p> <p>At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.</p> <p><i>34 C.F.R. 106.45(b)(6)(i)</i></p>
<i>Cross-Examination</i>	<p>At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under <i>34 C.F.R. 106.45(b)(5)(iv)</i> to otherwise restrict the extent to which advisors may participate in the proceedings.</p> <p>If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.</p> <p><i>34 C.F.R. 106.45(b)(6)(i)</i></p>
Relevance	<p>Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.</p> <p>Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.</p> <p><i>34 C.F.R. 106.45(b)(6)(i)</i></p>

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Refusal to
Submit to Cross-
Examination

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. 34 C.F.R. 106.45(b)(6)(i)

Recording

Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. 34 C.F.R. 106.45(b)(6)(i)

Determination
Regarding
Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in 34 C.F.R. 106.45(b)(1)(vii). The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 C.F.R. 106.30;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the recipient's code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

The recipient must provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an

appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX coordinator is responsible for effective implementation of any remedies.

34 C.F.R. 106.45(b)(7)

Dismissal of
Complaint

The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 34 C.F.R. 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or 34 C.F.R. Part 106; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted pursuant to this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

34 C.F.R. 106.45(b)(3)

Appeals

A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A recipient may offer an appeal equally to both parties on additional bases. As to all appeals, the recipient must:

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1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in 34 C.F.R. 106.45(b)(1)(iii);
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

34 C.F.R. 106.45(b)(8)

Confidentiality

The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a)*

Retaliation
Prohibited

No recipient or other 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 34 C.F.R. Part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Part 106. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or Part 106, constitutes retaliation. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under 34 C.F.R. 106.8(c).

The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under 34 C.F.R. Part 106 does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

34 C.F.R. 106.71

Removal or Leave

Nothing in 34 C.F.R. Part 106 precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Nothing in 34 C.F.R. Part 106, Subpart D precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with 34 C.F.R. 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

34 C.F.R. 106.44(c)-(d)

Publication

*Title IX
Coordinator and
Notice of Non-
discrimination*

The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX coordinator. *34 C.F.R. 106.8(a)*

Each recipient must prominently display the contact information required to be listed for the Title IX coordinator and the policy described in 34 C.F.R. 106.8(b)(1) on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under 34 C.F.R. 106.8(a).

A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on

the basis of sex except as such treatment is permitted by Title IX or 34 C.F.R. Part 106.

34 C.F.R. 106.8(b)(2)

*Grievance
Procedures and
Process*

A recipient must provide to persons entitled to a notification under 34 C.F.R. 106.8(a) notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond. *34 C.F.R. 106.8(c)*

*Training
Materials*

A recipient must make the materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website, or if the recipient does not maintain a website, the recipient must make these materials available upon request for inspection by members of the public. *34 C.F.R. 106.45(b)(10)*

Recordkeeping

A recipient must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under 34 C.F.R. 106.45(b)(6)(i), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

For each response required under 34 C.F.R. 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The

documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

34 C.F.R. 106.45(b)(10)

Section II: State Law

Definitions

*Dating Violence,
Sexual Assault,
and Stalking*

"Dating violence," "sexual assault," and "stalking" have the same meanings assigned by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f)(6)(A). *Education Code 51.251(2), .281(2); 19 TAC 3.3(c)*

*Sexual
Harassment*

"Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:

1. In the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
2. In the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities.

Education Code 51.251(5), .281(4); 19 TAC 3.3(e)

Employee

"Employee of a postsecondary educational institution" does not include a student enrolled at the institution. *Education Code 51.251(3)*

*Course and
Scope of
Employment*

"Course and scope of employment" means an employee performing duties in the furtherance of the institution's interests. *19 TAC 3.3(b)*

Sexual Assault
Policy

Each postsecondary educational institution, including each college district, shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each enrolled student and each employee of the institution and have the policy approved by the institution's governing body. The policy must include:

1. Definitions of prohibited behavior;
2. Sanctions for violations;
3. Protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking that complies with the electronic reporting requirement in 19 Administrative Code 3.7;

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4. Interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking pending the institution's disciplinary process, including protection from retaliation, and any other accommodations or supportive measures available to those victims at the institution. This section is not intended to limit an institution's ability to implement accommodations to others as needed; and
5. A statement regarding:
 - a. 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;
 - b. The right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and
 - c. The right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

As part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under this section, each postsecondary educational institution shall:

1. To the greatest extent practicable based on the number of counselors employed by the institution, ensure that each alleged victim or alleged perpetrator of an incident of a sexual harassment, sexual assault, dating violence, and stalking and any other person who reports such an incident are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and
2. Notwithstanding any other law, allow an alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, and stalking to drop a course in which both parties are enrolled without any academic penalty.

Education Code 51.282(a), (e); 19 TAC 3.4(a), (d)(2)(C)

Review

Each postsecondary educational institution shall review its sexual harassment, sexual assault, dating violence, and stalking policy at least each biennium and revise the policy as necessary and obtain approval from the institution's governing board. *Education Code 51.282(f); 19 TAC 3.4(e)*

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<i>Distribution</i>	<p>Each postsecondary educational institution shall make its policy on sexual harassment, sexual assault, dating violence, and stalking available to students, faculty, and staff members by:</p> <ol style="list-style-type: none">1. Including the policy in the student handbook and personnel handbook or the institution's equivalent(s); and2. Creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's homepage. <p><i>Education Code 51.282(b); 19 TAC 3.4(b)</i></p>
Responsible Employee	<p>Each postsecondary educational institution shall designate one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq and inform each student enrolled at the institution of the designated responsible employees. <i>Education Code 51.290(a); 19 TAC 3.14(a)</i></p>
Reporting <i>Employee Reporting Required</i>	<p>An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.</p> <p>The employee is required to report an incident regardless of when or where the incident occurred.</p> <p>Institutions may establish additional reporting avenues to comply with this section provided that the reports are promptly routed to the Title IX coordinator or deputy Title IX coordinator.</p> <p><i>Education Code 51.252(a); 19 TAC 3.5(a)</i></p>
Exception from Reporting	<p>A person is not required to make a report under this section concerning:</p> <ol style="list-style-type: none">1. An incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking;2. An incident of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational institution or by a student organization affiliated with the institution; or

3. A sexual harassment, sexual assault, dating violence, or stalking incident in which the person has either learned of the incident during the course of his or her institution's review or process or has confirmed with the person or office overseeing the review or process, that the incident has been previously reported.

Education Code 51.252(d); 19 TAC 3.5(d)

Contents of
Report

The report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident. *Education Code 51.252(b); 19 TAC 3.5(b)*

Limitations on
Reporting

*Designated
Confidential
Employees*

Each postsecondary educational institution shall designate one or more employees as persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking and inform each student enrolled at the institution of the designated confidential employees.

A confidential employee designated under this section may not disclose any communication made by a student to the employee unless the student consents to the disclosure or the employee is required to make the disclosure under 19 Administrative Code 3.5(c), state law, or federal law.

Absent consent from the reporting student, an employee designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking shall only state the type of incident reported and may not include any information that would violate a student's expectation of privacy.

Education Code 51.252(c), .290(a), (c); 19 TAC 3.5(c), .14

*Confidential
Employees
Under Other
Law*

Absent consent from the reporting individual, an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking under circumstances that render the employee's communications confidential or privileged under other law shall only state the type of incident reported and may not include any information that would violate an expectation of privacy. *Education Code 51.252(c); 19 TAC 3.5(c)*

*Medical
Providers*

Absent consent from the victim(s), an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking in the course and scope of employment as a health-care provider, mental health-care provider, or other medical provider shall only state the type of incident reported

and may not include any information that would violate an expectation of privacy. *Education Code 51.291(d); 19 TAC 3.5(c)*

*Multiple
Confidential
Employees*

When multiple confidential employees receive information about the same incident (e.g., student health center or counseling center), only a single report stating the type of incident is required. *19 TAC 3.5(c)*

*Reporting
Under Other
Law*

These limitations on disclosure do not affect the employee's duty to report an incident under any other law, including but not limited to, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f), Family Code 261.101, or Health and Safety Code 611.004. *Education Code 51.290(c); 19 TAC 3.5(c)*

Failure to Report
or False Report

A person commits an offense if the person is required to make a report under Education Code 51.252 and knowingly fails to make the report or with the intent to harm or deceive, knowingly makes a report under Education Code 51.252 that is false.

A postsecondary educational institution shall terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedure to have committed the offense.

Education Code 51.255(a), (c); 19 TAC 3.8

Student Advocate

A postsecondary educational institution may designate one or more students enrolled at the institution as student advocates to whom other students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. The institution shall notify each student enrolled at the institution of the student advocate(s) designated under this section.

A student advocate designated under this section may not disclose any communication made by a student to the advocate unless the student consents to the disclosure or the advocate is required to make the disclosure under state or federal law.

Education Code 51.290(b)–(c); 19 TAC 3.15

*Electronic
Reporting*

Each postsecondary educational institution shall provide an option for a student enrolled at or an employee of the institution to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must:

1. Allow for anonymous reporting; and

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2. Be easily accessible via a clearly identifiable link on the institution's website home page.

A protocol for reporting sexual assault adopted under Education Code 51.282 must comply with this section.

Education Code 51.283(a)–(c); 19 TAC 3.7

*Reporting on
Reports*

Title IX
Coordinator

Not less than once every three months, the Title IX coordinator of a postsecondary educational institution shall submit to the institution's chief executive officer a written report on the reports received for the institution's reporting period under 19 Administrative Code 3.5, including information regarding:

1. The investigation of those reports;
2. The disposition, if any, of any disciplinary processes arising from those reports; and
3. The reports for which the institution determined not to initiate a disciplinary process, if any.

The Title IX coordinator or deputy Title IX coordinator of a postsecondary educational institution shall immediately report to the institution's chief executive officer an incident reported to the coordinator under Section 3.5 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

Education Code 51.253(a)–(b); 19 TAC 3.6(a)–(b)

Chief Executive
Officer

At least once annually, during each fall or spring semester, the chief executive officer of a postsecondary educational institution shall submit to the institution's governing body and post on the institution's internet website a report concerning the reports received under 19 Administrative Code 3.5. The chief executive officer report may not identify any person and must include:

1. The number of reports received under Section 3.5;
2. The number of investigations conducted as a result of those reports;
3. The disposition, if any, of any disciplinary processes arising from those reports;
4. The number of those reports for which the institution determined not to initiate a disciplinary process, if any; and
5. Any disciplinary actions taken under 19 Administrative Code 3.8.

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If for any semester a postsecondary educational institution has fewer than 1,500 enrolled students, the chief executive officer of the institution shall submit and post a report required for that semester only if more than five reports were received under 19 Administrative Code 3.5 during that semester.

Education Code 51.253(c)–(d); 19 TAC 3.6(c)–(d)

Investigations

Request Not to Investigate

If an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution requests the institution not to investigate the alleged incident, the institution may investigate the alleged incident in a manner that complies with the confidentiality requirements under Education Code 51.291 and 19 Administrative Code 3.17. In determining whether to investigate the alleged incident, the institution shall consider:

1. The seriousness of the alleged incident;
2. Whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;
3. Whether the alleged incident poses a risk of harm to others; and
4. Any other factors the institution determines relevant.

If a postsecondary educational institution decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking based on the alleged victim's request not to investigate, the institution shall take any reasonable steps the institution determines necessary and consistent with the institution's policy and applicable law to protect the health and safety of the institution's community in relation to the alleged incident.

Education Code 51.285(a)–(b); 19 TAC 3.9(a)–(b)

Notice of Decision

A postsecondary educational institution shall inform an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking who requests the institution not to investigate the alleged incident of the institution's decision whether to investigate the alleged incident. *Education Code 51.285(c); 19 TAC 3.9(c)*

Confidentiality

Unless waived in writing by the person, the identity of a person described below is confidential and not subject to disclosure under the Public Information Act (PIA) and may be disclosed only to:

1. Persons employed by or under contract with the postsecondary educational institution to which the report is made who are

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necessary to conduct an investigation or the report or any related hearings;

2. A law enforcement officer as necessary to conduct a criminal investigation of the report;
3. A health-care provider in an emergency, as determined necessary by the institution;
4. The person or persons alleged to have perpetrated the incident, to the extent required by other law; and
5. Potential witnesses to the incident as necessary to conduct an investigation of the report and to the extent required by other law.

The protections provided by this section apply to:

1. An alleged victim;
2. A person who reports an incident to an institution;
3. A person who sought guidance from the institution concerning an incident;
4. A person who participated in the institution's investigation of an incident; or
5. A person who is alleged in a report made to an institution to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking, if after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

Education Code 51.256, .291(a), (c); 19 TAC 3.17

Retaliation
Prohibited
Employees

A postsecondary educational institution may not discipline or otherwise discriminate against an employee who in good faith makes a report as required by 19 Administrative Code 3.5 or cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a required report made by the employee. *Education Code 51.257(a); 19 TAC 3.18(a)*

Exception

The prohibition does not apply to an employee who:

1. Reports an incident of sexual harassment, sexual assault, dating violence, and stalking perpetrated by the employee; or
2. Cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident of sexual harassment, sexual assault, dating violence, and stalking.

Education Code 51.257(b); 19 TAC 3.18(b)

Any Person

A person acting in good faith who reports or assists in the investigation of a report of an incident described by 19 Administrative Code 3.5 or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's policy or code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment. This provision does not apply to a person who perpetrates or assists in the perpetration of the incident reported under Section 3.5. *Education Code 51.254; 19 TAC 3.5(e)-(f)*

Awareness

*Orientation on
Policy*

Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term of enrollment at the institution. The institution shall establish the format and content of the orientation. The orientation may be provided online and must include the statements described by 19 Administrative Code 3.4(a)(5). *Education Code 51.282(c); 19 TAC 3.4(c)*

*Prevention and
Outreach
Program*

Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking for enrolled students and employees of the institution. The program must:

1. Address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a public awareness campaign; a victim empowerment program; primary prevention; bystander intervention; and risk reduction; and
2. Provide students with information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking, including the name, office location, and contact information of the institution's Title IX coordinator, by:
 - a. Emailing the information to each student at the beginning of each semester or other academic term; and
 - b. Including the information in the institution's orientation, which may be provided online.

Education Code 51.282(d); 19 TAC 3.4(d)

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Equal Access

In implementing the requirements under 19 Administrative Code Chapter 3, Subchapter A, a postsecondary educational institution shall, to the greatest extent practicable, ensure equal access for students enrolled at or employees of the institution who are persons with disabilities. The institution shall make reasonable efforts to consult with a disability services office of the institution, advocacy groups for people with disabilities, and other relevant stakeholders to assist the institution with complying with the institution's duties under this section. *Education Code 51.293; 19 TAC 3.16*

Memoranda of Understanding

To facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the institution, a postsecondary educational institution shall enter into one or more memoranda of understanding with an entity from one or more of the following categories:

1. Local law enforcement agencies;
2. Sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and
3. Hospitals or other medical resource providers.

Education Code 51.289; 19 TAC 3.13

Compliance

The chief executive officer of each postsecondary educational institution shall annually certify in writing to the Coordinating Board, in October of each year, that the institution is in substantial compliance with Education Code Chapter 51, Subchapter E-2. The Coordinating Board shall make available to institutions a required template for the certification, which satisfies the requirements of this section.

If the Coordinating Board determines that a postsecondary educational institution is not in substantial compliance with Subchapter E-2 and Education Code Chapter 51, Subchapter E-3, the Coordinating Board may assess an administrative penalty against the institution in an amount not to exceed \$2 million. In determining the amount of the penalty, the Coordinating Board shall consider the nature of the violation and the number of students enrolled at the institution.

If the Coordinating Board assesses an administrative penalty against a postsecondary educational institution, the Coordinating Board shall provide to the institution written notice of the Coordinating Board's reasons for assessing the penalty. A postsecondary educational institution assessed an administrative penalty may appeal the penalty in the manner provided by Government Code Chapter 2001. A postsecondary educational institution may not pay the administrative penalty using state or federal money.

Education Code 51.258(a)-(e), .292(a)-(d); 19 TAC 3.19(a)-(e)

Note: This policy addresses complaints of sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation targeting students. For additional legally referenced material relating to discrimination, harassment, and retaliation, see FA(LEGAL). For sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation targeting employees, see DIAA.

**Statement of
Nondiscrimination**

The College District prohibits discrimination, including harassment, against any student on the basis of sex or gender. Retaliation against anyone involved in the complaint process is a violation of College District policy and is prohibited.

Definitions

Discrimination

Discrimination against a student is defined as conduct directed at a student on the basis of sex or gender that adversely affects the student.

Sexual Harassment
By an Employee

Sexual harassment of a student by a College District employee includes unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. A College District employee causes the student to believe that the student must submit to the conduct to participate in a college program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent, or pervasive that it limits or denies the student's ability to participate in or benefit from the College District's educational program or activities.

By Others

Sexual harassment of a student, including harassment committed by another student, includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it limits or denies a student's ability to participate in or benefit from the College District's educational program or activities.

Sexual Violence

Sexual violence is a form of sexual harassment. Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or due to an intellectual or other disability.

Dating Violence

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature

with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

*Domestic
Violence*

"Domestic violence" means violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- Any other member of the victim's family as defined by state law;
- Any other current or former member of the victim's household as defined by state law;
- A person in a dating relationship with the victim as defined by state law; or
- Any other person who acts against the victim in violation of the family violence laws of this state or the jurisdiction where the conduct occurs.

Stalking

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

1. "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.
2. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

Examples

Examples of sexual harassment of a student may include sexual advances; touching intimate body parts or coercing physical contact that is sexual in nature; jokes or conversations of a sexual nature; rape; sexual assault as defined by law; sexual battery; sexual coercion; and other sexually motivated conduct, communications, or contact.

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Examples may also include forms of dating violence, domestic violence, or stalking, such as physical or sexual assaults; name-calling; put-downs; or threats directed at the student, the student's family members, or members of the student's household; destroying the student's property; threatening to commit suicide or homicide if the student ends the relationship; tracking the student; attempting to isolate the student from friends and family; threatening a student's spouse or partner; or encouraging others to engage in these behaviors.

Gender-Based
Harassment

Gender-based harassment includes physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity. For purposes of this policy, gender-based harassment is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct limits or denies a student's ability to participate in or benefit from the College District's educational program.

Acts of gender-based harassment may also be considered sex discrimination or sexual harassment.

Examples

Examples of gender-based harassment directed against a student, regardless of the student's or the harasser's actual or perceived sexual orientation or gender identity, may include offensive jokes, name-calling, slurs, or rumors; physical aggression or assault; threatening or intimidating conduct; or other kinds of aggressive conduct such as theft or damage to property.

Prohibited Conduct

In this policy, the term "prohibited conduct" includes discrimination, harassment, dating violence, domestic violence, stalking, and retaliation as described by this policy, even if the behavior does not rise to the level of unlawful conduct.

Complainant

In this policy, the term "complainant" refers to an applicant for admission or a student who is alleged to have experienced prohibited conduct. The term also includes a former student who is alleged to have experienced prohibited conduct while participating, or attempting to participate, in the College District's educational program or activity.

Respondent

In this policy, the term "respondent" refers to a person who is alleged to have committed prohibited conduct.

Confidential
Employee

A "confidential employee" is a person who holds a professional license requiring confidentiality, such as a counselor or medical provider, who is supervised by such a person, or a person who is a

nonprofessional counselor or advocate designated in administrative procedures as a confidential source.

**Reporting
Procedures**

Student Report

A victim of prohibited conduct has the right to report the incident to the College District and to receive a prompt and equitable resolution of the report.

Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to the Title IX coordinator, the College President, or another employee. A report against the College President may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation. A student shall not be required to report prohibited conduct to the person alleged to have committed the conduct.

Alternatively, a student may submit the report electronically through the College District's website. The submission of an anonymous electronic report may impair the College District's ability to investigate and address the prohibited conduct.

A victim of a crime has the right to choose whether to report the crime to law enforcement, to be assisted by the College District in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

It is important that a victim of prohibited conduct go to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident.

Exception

Absent consent or unless required by law, a student designated in administrative regulations as a student advocate to whom another student may speak confidentially concerning prohibited conduct may not disclose any communication made by the other student.

Employee Report

Any College District employee who suspects or receives notice that a student or group of students has or may have experienced prohibited conduct, regardless of when or where the incident occurred, shall immediately notify the Title IX coordinator and shall take any other steps required by this policy. Additionally, the employee may report to the College President or designee.

A report against the College President must also be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

Exceptions

**Disclosure at
Event**

A person who received the information solely from a disclosure at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational

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institution or by a student organization affiliated with the institution is not required to report the prohibited conduct unless the person has the authority to institute corrective measures on behalf of the College District.

**Employee
Subject to
Confidentiality
Rules**

Absent the student's consent, or unless required by law, a confidential employee shall only be required to disclose the type of incident reported and may not disclose information that would violate the student's expectation of privacy. If multiple confidential employees receive information about the same alleged incident, then only one report disclosing the type of incident must be submitted.

Prior Report

A person who has either learned of an incident of prohibited conduct during the course of the College District's review or process, or has confirmed with the person or office overseeing the review or process that the incident has been previously reported, is not required to report the prohibited conduct.

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment and gender-based harassment, may be directed to the Title IX coordinator. The College District designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended, and related state and federal laws:

Title IX Coordinator: Oscar Garcia, Director of Human Resources/Title IX Administrator

Address: 2401 Garner Field Road, Uvalde, TX 78801

Telephone: (830) 591-7330

Email: [Title IX Coordinator email¹](#)

Webpage: [Title IX/Sexual Misconduct webpage²](#)

**Responsible
Employees**

All employees, with the exception of confidential employees, are designated as responsible employees for purposes of compliance with Title IX.

Timely Reporting

A failure to immediately report prohibited conduct may impair the College District's ability to investigate and address the conduct.

Consolidate Reports

When the allegations underlying two or more reports arise out of the same facts or circumstances, the College District may consolidate the reports.

Advisor

Each party to the complaint may be assisted by an advisor of the party's choice who may participate in the proceedings in a manner consistent with College District procedures.

Conflict of Interest Prohibited	No person designated as the Title IX coordinator, a deputy Title IX coordinator, an investigator, a decision-maker, or a facilitator of an informal resolution process shall have a conflict of interest or bias.
Training	A person designated as the Title IX coordinator, a deputy Title IX coordinator, an investigator, a decision-maker, or a facilitator of an informal resolution process shall receive training as required by law and College District procedures.
Days	“Days” shall mean College District business days, unless otherwise noted. In calculating timelines under this policy, the day a document is filed is “day zero.” The following business day is “day one.”
Extension of Timelines	Timelines established by this policy and associated procedures may be subject to a limited extension if good cause, as defined in this policy and College District regulations, exists. The College District shall promptly provide written notice to the parties of an extension and the reason for the extension.
Investigation of the Report	The College District may request, but shall not require, a written report. If a report is made orally, the Title IX coordinator or designee shall reduce the report to written form.
Initial Assessment	Upon receipt or notice of a report, the Title IX coordinator shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the Title IX coordinator shall promptly offer supportive measures to the complainant. The Title IX coordinator shall explain the process for filing a formal complaint and assess any request not to investigate. If the College District moves forward with the investigation, the Title IX coordinator shall immediately provide notice to the known parties to the complaint. If the Title IX coordinator determines that the allegations, if proven, would not constitute prohibited conduct as defined by this policy but may constitute a violation of other College District rules or regulations, the Title IX coordinator shall refer the complaint for consideration under the appropriate policy.
<i>Request Not to Investigate</i>	The complainant may request that the College District not investigate the allegations. If the complainant requests that the allegations not be investigated, in deciding whether to initiate the investigation, the College District must consider the factors described by law and any other factors the College District considers relevant. The College District shall promptly notify the complainant of the decision regarding whether it will conduct the investigation. If the College District decides not to investigate the allegations, the College District shall take reasonable steps to protect the health and safety of the College District community.

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Formal Complaint	To be considered a formal complaint under Title IX, the complainant or the Title IX coordinator must sign the written report.
Notice to Parties	<p>The notice to the parties must describe the allegations and the formal and informal options for resolution of the complaint. The notice must state that the respondent is presumed not responsible until a determination regarding responsibility is made. The notice must also include information regarding the option to select an advisor, the opportunity to inspect and review evidence, and the prohibition on knowingly making false statements or submitting false information during the investigation and any ensuing proceedings.</p> <p>If the allegations are subsequently amended, the College District shall provide an updated notice reflecting the new allegations.</p>
Informal Resolution	The College District may offer to the parties a process for the informal resolution of a formal complaint as defined by law. If the parties voluntarily agree in writing to participate in informal resolution of the complaint, the Title IX coordinator shall determine within three days if informal resolution is appropriate for the complaint. If the Title IX coordinator determines that informal resolution is appropriate, then the Title IX coordinator or designee may facilitate that resolution within ten days. If the Title IX coordinator does not determine informal resolution to be appropriate, then the complaint will be subject to the formal resolution process. This process is not available in situations where an employee is alleged to have sexually harassed a student.
Formal Resolution	If the complaint is not subject to the informal resolution process, the Title IX coordinator shall authorize or undertake an investigation, except as provided below at Criminal or Regulatory Investigation.
Supportive Measures	If appropriate and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the Title IX coordinator shall promptly provide supportive measures intended to address prohibited conduct, protect the safety of the parties and others, and protect the parties from retaliation prior to the completion of the investigation. Examples of possible supportive measures include academic accommodations, such as extensions of deadlines or other course-related adjustments and modifications of class schedules; housing and dining modifications; temporary removal from an education program or activity in accordance with law; counseling; health services; campus escort services; mutual restrictions on contact between the parties; and increased security and monitoring of certain areas of the campus.

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College District
Investigation

The investigation may be conducted by the Title IX coordinator or designee or by a third party designated by the College District, such as an attorney.

The investigation may consist of personal interviews with the complainant, the respondent, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

The parties shall be provided an equal opportunity to present witnesses and evidence and to inspect and review any directly related evidence obtained by the College District so that the parties may meaningfully respond during the investigation process. The parties expected to participate in an investigative interview or other meeting shall be provided written notice in enough time to prepare to participate.

At least ten days prior to the completion of the investigation report, the College District must send each party and the party's advisor evidence subject to inspection and review. The parties may submit a written response for consideration by the investigator.

Criminal or
Regulatory
Investigation

If a law enforcement or regulatory agency notifies the College District that a criminal or regulatory investigation has been initiated, the College District shall confer with the agency to determine if the College District's investigation would impede the criminal or regulatory investigation. The College District shall proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. After the law enforcement or regulatory agency has completed gathering its evidence, the College District shall promptly resume its investigation. Any delay under this provision shall constitute good cause for an extension of timelines established by this policy and associated procedures.

**Concluding the
Investigation**

The investigation shall be completed within a reasonable time, not to exceed 30 days from the date of the report.

The investigator shall prepare a written report of the investigation. The investigation report shall be filed with the Title IX coordinator within five days following the completion of the investigation.

Notification of the
Report

The Title IX coordinator shall provide the investigation report, within the extent permitted by the Family Educational Rights and Privacy Act (FERPA) or other law, to the complainant and the respondent promptly following receipt. The parties shall be given ten days to respond to the report.

**College District
Action**

The Title IX coordinator shall submit the investigation report and any response from the parties to the vice president of student services promptly after receipt of the parties' response but no later than the expiration of the parties' deadline to respond.

The vice president of student services or designee shall summon the parties for a hearing to be held within a reasonable time, not to exceed ten days, following the receipt of the investigation report. The hearing shall be conducted in accordance with law and College District procedures.

After the hearing, the vice president of student services or designee shall determine whether each individual allegation of prohibited conduct occurred using a preponderance of the evidence standard and determine the appropriate disciplinary or corrective action. In making the determination, the vice president of student services or designee shall evaluate all relevant evidence objectively and shall not make credibility assessments based on a person's status as the complainant, the respondent, or a witness. The vice president of student services or designee shall create a written determination regarding responsibility in accordance with law and College District procedures within five days following the hearing and submit the determination to the parties simultaneously.

**Disciplinary or
Corrective Action**

If the vice president of student services or designee determines that prohibited conduct occurred, the College District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.

Examples of disciplinary or corrective action may include:

- Implementing the disciplinary measures described in FM for students or DH and DM series for employees;
- Providing a training program for those involved in the complaint;
- Providing a comprehensive education program for the College District community;
- Providing counseling for the victim and the party who engaged in prohibited conduct;
- Permitting the victim or student who engaged in the prohibited conduct to drop a course in which they both are enrolled without penalty;
- Conducting follow-up inquiries to determine if any new incidents or any instances of retaliation have occurred;

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- Involving students in efforts to identify problems and improve the College District climate;
- Increasing staff monitoring of areas where prohibited conduct has occurred;
- Reaffirming the College District's policy against discrimination and harassment; and
- Taking other actions described in College District regulations.

Exception

The College District shall minimize attempts to require a complainant to resolve the problem directly with the person who engaged in the harassment; however, if that is the most appropriate resolution method, the College District shall be involved in an appropriate manner. In no event may a student be required to resolve a complaint of sexual harassment by an employee directly with the employee.

Improper Conduct

If the vice president of student services or designee determines that improper conduct occurred that did not rise to the level of prohibited conduct, the College District may take disciplinary action in accordance with College District policy and procedures or other corrective action reasonably calculated to address the conduct.

Dismissal of Complaint

Mandatory Dismissal

An allegation presented as a formal complaint under Title IX is subject to the mandatory dismissal procedures under law.

Permissive Dismissal

Any complaint may be dismissed at any time on request of a complainant. The Title IX coordinator must first assess the request in accordance with this policy at Request Not to Investigate, above.

A complaint may also be dismissed if specific circumstances prevent the College District from gathering evidence sufficient to reach a determination as to the complaint or allegations.

Notice of Dismissal

Upon dismissal of a complaint, the Title IX coordinator or the vice president of student services or designee shall provide the parties written notice of the dismissal.

Confidentiality

To the greatest extent possible, consistent with law, the College District shall respect the privacy of the complainant or the respondent or a person who makes a report or serves as a witness. Limited disclosures may be necessary to carry out the purposes of this policy and associated regulations and to comply with applicable law.

Retaliation

The College District prohibits retaliation against any person for the purpose of interfering with a right or privilege under this policy; the complainant; or a person who, in good faith, makes a report or

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complaint, serves as a witness, or otherwise participates or refuses to participate in an investigation, proceeding, or hearing under this policy. This prohibition does not apply to discipline of a person who perpetrated or assists in the perpetration of the prohibited conduct.

A person who is alleged to have experienced retaliation may pursue a claim under this policy or policy DIAA, as appropriate.

Examples

Examples of retaliation may include threats, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

Failure to Report and False Claims

An employee who fails to make a required report or a student or employee who intentionally makes a false claim, offers a false statement, or refuses to cooperate with a College District investigation regarding prohibited conduct shall be subject to appropriate disciplinary action.

Appeal

Discipline or Corrective Action

Students

Suspension

If the vice president of student services or designee determines that a student committed prohibited conduct that warrants a suspension, the official shall forward the determination and all evidence collected during the investigation and hearing to the College President. A conference shall be scheduled within ten days of the notice of determination in accordance with FMA, beginning at Appeal to College District Administration.

Expulsion

If the vice president of student services or designee determines that the student committed prohibited conduct that warrants expulsion, the official shall forward the determination and all evidence collected during the investigation and hearing to the College President to schedule an expulsion hearing before the Board in accordance with FMA.

Other Action

If the vice president of student services or designee determines that the student committed prohibited conduct that warrants other discipline or corrective action, the vice president of student services or designee shall inform the student that the student may appeal the determination within ten days in accordance with FMA, beginning at Appeal to College District Administration.

Employee

Suspension
Without Pay or
Termination of
Contract
Employees

If the vice president of student services or designee determines that a contract employee committed prohibited conduct that warrants suspension without pay or termination mid-contract, the vice president of student services or designee shall inform the employee in writing of the determination, and a Board hearing shall be scheduled in accordance with DMAA.

Other Action

If the vice president of student services or designee determines that the employee committed prohibited conduct that warrants

other discipline or corrective action, the vice president of student services or designee shall inform the employee that the employee may appeal the determination within ten days in accordance with DGBA, beginning at Level Three.

Other Appeals

All other appeals related to this policy may be submitted through the applicable grievance policy beginning at the appropriate level. [See DGBA(LOCAL) for employees, FLD(LOCAL) for students, and GB(LOCAL) for community members]

Complaints Filed with OCR

A party shall be informed of his or her right to file a complaint with the U.S. Department of Education Office for Civil Rights (OCR).

Records Retention

Retention of records shall be in accordance with the College District's records retention procedures. [See CIA]

Access to Policy, Procedures, and Related Materials

Information regarding this policy and any accompanying procedures, as well as relevant educational and resource materials concerning the topics discussed in this policy, shall be distributed to applicants for admission and employment and annually to College District employees, students, and parents or guardians of dual credit students in compliance with law and in a manner calculated to provide easy access and wide distribution, such as through electronic distribution and inclusion in the employee and student handbooks and other major College District publications. Information regarding the policy, procedures, and related materials and any materials used to train a person designated as the Title IX coordinator, a deputy Title IX coordinator, an investigator, a decision-maker, or a facilitator shall also be prominently published on the College District's website on a dedicated page accessible through a clear link on the homepage, taking into account applicable legal requirements. Copies of the policy and procedures shall be readily available at the College District's administrative offices and shall be distributed to a student who makes a report.

¹ Title IX Coordinator email: <mailto:osgarcia@swtjc.edu>

² Title IX/Sexual Misconduct webpage:
<https://www.swtjc.edu/about/campus-safety/sexual-misconduct.html>

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**Reports of Alleged
Misconduct**

College District faculty and staff shall submit an alleged violation or violations of College District policies and procedures, including the rules for student conduct [see FLB], committed by a student to the vice president of student services within a reasonable time following an alleged incident, not to exceed ten College District business days. The allegations must be submitted in writing, through traditional or electronic means, and must describe the violation and any surrounding facts.

The vice president of student services or designee shall investigate the matter as necessary. If an allegation is deemed to be unfounded, the vice president of student services or designee shall dismiss the allegation and shall provide the student written notice that the allegation of misconduct was made against the student and that the allegation was dismissed.

Exception

Reports of sex discrimination or sexual harassment shall be submitted in accordance with DIIA or FFDA, as appropriate.

Conference

If, however, the vice president of student services or designee determines that the allegation warrants further consideration, the vice president of student services or designee shall summon the student for a conference to be held within a reasonable time, not to exceed ten College District business days, following the receipt of the allegation of misconduct.

At the conference, the vice president of student services or designee shall notify the student of the allegation or allegations and provide the student an opportunity to respond.

**Unfounded
Allegations**

After conferring with the student, if the vice president of student services or designee determines that the student did not commit a violation, the allegation or allegations shall be dismissed as unfounded. The student shall be provided written notice of the dismissal.

**Misconduct
Warranting a
Penalty**

If the vice president of student services or designee determines that the student committed misconduct that warrants a penalty other than suspension or expulsion, the vice president of student services or designee shall provide the student written notice of the penalty and the student's right to appeal to the disciplinary appeals committee.

Suspension

If the vice president of student services or designee determines that the student committed misconduct that warrants a suspension, the vice president of student services or designee shall inform the student in writing of the determination, and a hearing shall be scheduled for consideration by the disciplinary appeals committee as described below.

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<i>Expulsion</i>	If the vice president of student services or designee determines that the student committed misconduct that warrants expulsion, the official shall inform the student in writing of the determination. The vice president of student services or designee shall forward the determination and all evidence collected during the investigation and conference to the College President in order to schedule an expulsion hearing before the Board [see Expulsion Hearing, below].
Interim Disciplinary Action	The vice president of student services or designee may take immediate disciplinary action, including suspension pending a hearing, against a student for policy violations if the continuing presence of the student poses a danger to persons or property or an ongoing threat of disrupting the educational environment.
Disciplinary Appeals Committee	<p>The disciplinary appeals committee shall be convened:</p> <ol style="list-style-type: none">1. On request of a student appealing a penalty other than suspension or expulsion. The request must be filed in writing, on a form provided by the College District, within ten College District business days of the date of the administration's written notice.2. Automatically, if the vice president of student services or designee determines that a student committed misconduct warranting suspension.
Composition	The disciplinary appeals committee shall be composed of at least three College District employees and a minimum of one current College District student. The members of the disciplinary appeals committee and the committee chairperson shall be designated according to procedures developed by the College President. All members of the disciplinary appeals committee shall be eligible to vote during the hearing.
Hearing Notice	The vice president of student services or designee shall notify the student by letter of the date, time, and place for the hearing. Unless the student and the vice president of student services or designee otherwise agree, the hearing shall take place within a reasonable time period, not to exceed ten College District business days after the date of the student's request for the hearing or the vice president of student services or designee's determination that the student should be suspended.
<i>Contents of Notice</i>	<p>The notice shall:</p> <ol style="list-style-type: none">1. Direct the student to appear on the date and at the time and place specified.2. Advise the student of his or her rights:

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- a. To have a private hearing.
 - b. To be assisted by an adviser or legal counsel at the hearing.
 - c. To call witnesses, request copies of evidence in the College District's possession, and offer evidence and agreement on his or her own behalf.
 - d. To make an audio recording of the proceedings, after first notifying the vice president of student services or designee in advance of the hearing, or, at the student's own expense, to have a stenographer present at the hearing to make a stenographic transcript of the hearing.
 - e. To ask questions of each witness who testifies against the student.
3. Contain the names of witnesses who will testify against the student and a description of documentary and other evidence that will be offered against the student.
 4. Contain a description of the allegations of misconduct in sufficient detail to enable the student to prepare his or her defense against the charges.
 5. State the proposed punishment or range of punishments that may be imposed.

Failure to Appear
for Hearing

The disciplinary appeals committee may impose appropriate punishment upon a student who fails without good cause to appear for the hearing; for purposes of assessing punishment, the committee may proceed with the hearing in the student's absence.

Hearing Procedure

The hearing shall proceed as follows:

1. The chairperson shall read the description of the misconduct.
2. The chairperson shall inform the student of his or her rights.
3. The designated official or representative shall present the College District's case.
4. The student or representative shall present the student's defense.
5. The designated College District official or representative shall present rebuttal evidence.
6. The committee members may ask questions of witnesses testifying on behalf of the student or the College District.

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7. The designated official or representative shall summarize and argue the College District's case.
8. The student or representative shall summarize and argue his or her case.
9. The designated official or representative shall have an opportunity for rebuttal argument.
10. The committee members shall deliberate in closed session. The committee members shall vote on the issue of whether or not the student violated College District policies and procedures, including the rules for student conduct.
11. If the committee finds the student did commit misconduct, the committee shall determine whether the penalty assessed, or proposed in the case of suspension, by the vice president of student services or designee is appropriate and, if necessary, shall assess a different or additional penalty.
12. The committee chairperson shall communicate the decision and any findings of facts in support of the committee's decision to the student in writing within ten College District business days of the hearing. The notice shall include procedures for appealing the committee's decision to the College President.

All hearings shall be recorded by the College District. A stenographic digest of the recording shall be made if needed for an appeal, and, on request, the student shall be given a copy of the digest. The student or the student's representative may listen to the tape recording and compare it with the digest.

Evidence

Evidence shall be handled in accordance with the following:

1. Legal rules of evidence do not apply; the committee chairperson may admit evidence or exclude evidence considered to be irrelevant, immaterial, and unduly repetitious.
2. At the hearing, the College District shall be required to prove by a preponderance of the evidence that the charges are true.
3. A student may not be compelled to testify.
4. The committee shall determine if a violation has occurred and assess an appropriate penalty based solely on the evidence presented at the hearing.

**Appeal to College
District
Administration**

A student may, within ten College District business days of receiving notice of the disciplinary appeal committee's decision, petition

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in writing the College President to review the decision. The student's petition shall state with particularity why the decision is believed to be incorrect. After receiving notice of the appeal, the disciplinary appeals committee chairperson shall forward all evidence considered during the hearing, the audio recording of the hearing, and the digest of the hearing, if applicable, to the College President.

The College President shall hold a conference within ten College District business days after the appeal notice is filed. At the conference, the student may provide information concerning any documents or information relied on by the committee. The College President may set reasonable time limits for the conference. The conference shall be audio recorded.

The College President shall provide the student a written response, stating the basis of the decision, within ten College District business days following the conference. In reaching a decision, the College President may consider the evidence included in the student's petition, provided during the conference, and forwarded by the committee chairperson. The College President may act to affirm, modify, remand, or reverse the decision of the disciplinary appeals committee.

Appeal to Board

If the College President affirmed or modified the decision of the disciplinary appeals committee or if the time for a response has expired, the student may appeal the decision to the Board. The appeal notice must be filed in writing, on a form provided by the College District, within ten College District business days after receipt of the written response from the College President, or, if no response was received, within ten College District business days of the response deadline.

The College President or designee shall inform the student of the date, time, and place of the Board meeting at which the appeal will be on the agenda for presentation to the Board.

The College President or designee shall provide the Board the evidence presented to the College President, as well as the audio recording of the College President's conference with the student and the written response provided by the College President to the student.

The College District shall determine whether the appeal will be presented in open or closed meeting in accordance with the Texas Open Meetings Act and other applicable law. [See BD]

The presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the student and

the administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the appeal and may request that the administration provide an explanation for the decisions at the preceding levels.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the hearing. The hearing, including the presentation by the student or the student's representative, any presentation from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the evidence. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. If for any reason the Board fails to reach a decision regarding the evidence by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the vice president of student services's decision.

Expulsion Hearing

If the vice president of student services or designee determines that the student's misconduct warrants expulsion [see Conference, above], the Board shall convene to conduct an expulsion hearing. The College President or designee shall inform the student of the date, time, and place of the Board meeting at which the appeal will be on the agenda for presentation to the Board. The notice shall contain the contents described at Disciplinary Appeals Committee—Contents of Notice, above.

The College President or designee shall provide the Board the documentation presented by the vice president of student services.

The Board shall proceed according to the procedures set out at Disciplinary Appeals Committee—Failure to Appeal for Hearing, Hearing Procedure, and Evidence, above, with the Board substituted for references to the committee and the presiding officer of the Board substituted for the committee chairperson.