SECTION IX – SEXUAL MISCONDUCT

IX.A. Sexual Misconduct

IX.A.1.1. Policy
This policy covers sexual misconduct as prohibited by applicable laws and the College. The College does not tolerate sexual misconduct by its students, employees, or third parties. Nothing in this policy prohibits anyone from filing a report or complaint with any other agency, including law enforcement.23 The College will assist in filing a report with law enforcement if a complainant requests assistance.24 The College acknowledges the importance of complainants going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident.25 The College shall review and update this policy as required by law.26

IX.A.1.2. Official with Authority27
Unless otherwise designated by the Chancellor, the Executive Director, Compliance Education and Training in the Office of Governance, Accountability, and Compliance is responsible for implementing the College’s sexual misconduct policy including serving as the Title IX Coordinator.28 Students may speak with the Title IX Coordinator confidentially concerning sexual misconduct.29 For simplicity, the College official with authority will be referred to as the Title IX Coordinator even for reports that are not considered Title IX sexual harassment.

IX.A.1.3. Definitions
This section provides a non-exhaustive list of defined terms used in this policy and its associated Chancellor’s Procedures, including but not limited to prohibited behavior.30

(a) Clery Act/VAWA Sex Offenses.31 Clery Act/VAWA Sex Offenses include the following four offenses:

24 Id.
25 Id. § 51.282(a)(1)(E)(i); 19 Tex. Admin. Code § 3.4(a).
27 Title IX Regulations, Preamble, at 50–51.
31 This phrase is used by the Title IX regulations to refer to the four Clery Act/VAWA Sex Offenses that are also included in the definition of Title IX Sexual Harassment. Title IX Regulations, Preamble, at 41–43.
1. **Dating Violence.** Dating violence is committed by a person who is or was in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant’s statement and with consideration of the relationship length, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence also includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Finally, dating violence does not include acts covered by the definition of domestic violence.\(^{32}\)

2. **Domestic Violence.** Domestic violence is committed by: a current or former spouse or intimate partner of the complainant; a person with whom the complainant shares a child in common; a person who is cohabiting with or has cohabited with the complainant as a spouse or intimate partner; a person similarly situated to a complainant’s spouse under Texas domestic or family violence laws; or any other person against an adult or youth complainant who is protected from the person’s acts under Texas domestic or family violence laws.\(^{33}\)

3. **Sexual Assault:** Sexual assault is an offense that meets the definition of rape, fondling, incest, or statutory rape as stated in the Federal Bureau of Investigation’s Uniform Crime Reporting Program.\(^{34}\)

4. **Stalking:** Stalking is defined as engaging in a course of conduct (two or more acts), including, but not limited to, a pattern of repeated and unwanted attention, harassment, or conduct, directed at a specific person that would cause a reasonable person to fear for his or her safety, the safety of others, or suffer substantial emotional distress. Substantial emotional distress is significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.\(^{35}\)

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\(^{32}\) 20 U.S.C. § 1092(f)(6)(A) (citing 34 U.S.C. § 12291(a)(10)) (“The term ‘dating violence’ means violence committed by a person-- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.”)

\(^{33}\) Id. § 1092(f)(6)(A) (citing 34 U.S.C. § 12291(a)(8)) (“The term ‘domestic violence’ includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.).

\(^{34}\) Id. § 1092(f)(6)(A)(v) (“The term ‘sexual assault’ means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”).

\(^{35}\) Id. § 1092(f)(6)(A) (citing 34 U.S.C. § 12291(a)(30)) (“The term ‘stalking’ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”).
(b) **Complainant.** Complainant means a person who is alleged to be the victim of sexual misconduct irrespective of who reported the sexual misconduct and whether a formal complaint has been filed.

(c) **Consent.** Sexual activity requires consent. Consent is defined as a voluntary and positive agreement between the participants to engage in sexual activity. Consent to sexual activity may be communicated in a variety of ways, but one should presume that consent has not been given in the absence of a clear, positive agreement between the participants. While verbal consent is not an absolute requirement for consensual sexual activity, verbal communication prior to engaging in sexual activity helps to clarify consent and avoid any misunderstandings.

Consent must be clear and unambiguous for each participant at every stage of a sexual encounter. A prior relationship does not indicate consent to future activity. A person who is asleep or mentally or physically incapacitated, either through the effect of drugs, alcohol, or for any other reason, is not capable of giving valid consent. The use of alcohol or drugs may seriously interfere with the participants’ judgment about whether consent has been sought and given.

(d) **Quid Pro Quo Harassment.** Quid pro quo harassment means: (1) in the employment context, when submission to or rejection of unwelcome sexual conduct by a College employee is used as a basis for employment decisions affecting that employee;

(e) **Respondent.** Respondent means an individual who has been reported to be the alleged perpetrator of conduct that could constitute sexual misconduct.

(f) **Sexual Misconduct.** Sexual misconduct, as used in this policy, means unwelcome behavior of a sexual nature that includes: (1) sexual harassment; (2) Title IX sexual harassment; and (3) conduct that a reasonable person would consider inappropriate or unprofessional in the College’s educational and or working environment.

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36 Title IX Regulations, Preamble, at 363 (“The Department believes that the definition of what constitutes consent for purposes of sexual assault within a recipient’s educational community is a matter best left to the discretion of recipients,... ”).

37 Consent must be defined in “a statement of policy.” 20 U.S.C. § 1092(f)(8)(B)(i)(I)(cc). The statement of policy, unlike the requirements under state law, does not need to be approved by the institution’s governing board. The Title IX regulations do not require a particular definition of consent. 34 C.F.R. § 106.30 (“The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.”).

38 29 C.F.R. § 1604.11 (“'Quid pro quo harassment’ occurs when submission to or rejection of unwelcome sexual conduct by individual is used as basis for employment decisions affecting that individual.”) (citation omitted).

39 Id. § 106.30 (A “respondent” is defined “as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”); see also 34 C.F.R. § 106.45(b)(3)(ii) (The respondent must be enrolled at the College at the time of the conduct).
(g) **Sexual Harassment.** Sexual harassment, as used in this policy, means unwelcome sexual conduct that does not meet the definition or requirements under Title IX sexual harassment and: (1) in the employment context, unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment; (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 the College’s educational programs or activities; (3) is quid pro quo harassment; or (4) is a Clery Act/VAWA sex offense.40

(h) **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 College’s education program or activity without unreasonably burdening the complainant or respondent, including measures designed to protect the safety of all parties or the College’s educational environment, or deter sexual harassment.41

(i) **Title IX Sexual Harassment:** Title IX harassment means: (1) a Clery Act/VAWA sex offense; (2) unwelcome conduct that a reasonable person would determine is so sufficiently severe, pervasive, and objectively offensive as to deny equal access to the College’s education program or activity; or (3) quid pro quo harassment in the education context.42 The alleged behavior must occur in a College educational program or activity and within the United States.43

**IX.A.1.4. Sexual Misconduct Procedures**

Sexual misconduct reports, complaints, and investigations are governed by the policy outlined below. Chancellor’s Procedures and forms shall supplement this policy.

(a) **Reporting Sexual Misconduct**44 Sexual misconduct reports should be made to the Title IX Coordinator.

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40 Tex. Educ. Code § 51.281(4) (defining “Sexual harassment” to mean “unwelcome, sex-based verbal or physical conduct that: (A) in the employment context, unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment; or (B) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student’s ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.”); see also 19 Tex. Admin. Code § 3.3(e) (same).

41 34 C.F.R. § 106.30.

42 Title IX Regulations, Preamble, at 31–32.

43 34 C.F.R. §§ 106.30, 106.44(a) (“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 be promptly in a manner that is not deliberately indifferent . . . ‘education program or activity’ includes location, 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.”).

44 The policy must generally include the protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking. Tex. Educ. Code § 51.282(a)(1)(C).
1. **Generally.** Any person who believes sexual misconduct occurred may promptly report the incident to the Title IX Coordinator.\(^{45}\)

2. **Employees.** A College employee who,\(^{46}\) in the course and scope of employment,\(^{47}\) witness or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes Title IX sexual harassment or sexual harassment and is alleged to have been committed by or against a person who was a College student or employee at the time of the incident shall promptly report the incident to the Title IX Coordinator unless the employee meets a statutory exception.\(^{48}\)

**(b) College Response to Sexual Misconduct Report.** Complainants have the right to receive a prompt and equitable resolution of the report.\(^{49}\) The Title IX Coordinator will review the report and contact the complainant.\(^{50}\)

1. **Supportive Measures.** The College may take supportive measures to protect the complainant, respondent, and the College’s community members depending on the nature of the case\(^{51}\) and the evidence provided.\(^{52}\)

2. **Removal.** The College may remove a respondent from an educational program or activity on an emergency basis if the College 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.\(^{53}\) The College may remove an employee-respondent or third party from College premises at any time. The College shall comply with any legal requirements in a removal proceeding.\(^{54}\)

3. **Informal Resolution.** The College may facilitate an informal resolution process by providing proper notice and obtaining the parties’ voluntary, written consent at any time after a complaint is filed but prior to reaching a determination regarding responsibility.\(^{55}\) Informal resolution may not be used to resolve sexual misconduct allegations where an employee is a respondent.\(^{56}\)

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\(^{45}\) 34 C.F.R. § 106.8(a).

\(^{46}\) Tex. Educ. Code § 51.251(4) (An “employee” does not include a student enrolled at the College).

\(^{47}\) 19 Tex. Admin. Code § 3.3(b) (Course and scope of employment means an employee performing duties in the furtherance of the institution’s interest).

\(^{48}\) See 34 C.F.R. § § 51.252(a); see also Tex. Educ. Code § 51.252(b); 19 Tex. Admin. Code § 3.5 (Texas law provides exceptions to a duty to report); 19 Tex. Admin. Code § 3.8 (Compulsory termination).

\(^{49}\) 34 C.F.R. § 51.282(a)(1)(E)(ii).

\(^{50}\) 34 C.F.R. § 106.44(a).

\(^{51}\) Supportive Measures may be instituted regardless of whether a complaint was filed. 34 C.F.R. § 106.30.


\(^{53}\) 34 C.F.R. § 106.44(c).


\(^{55}\) 34 C.F.R. § 106.45(b)(9)(i)–(ii).

\(^{56}\) Id. § 106.45(b)(9)(iii).
(c) **Notices.** The College will provide written notices to the parties and their advisors once identified.\(^{57}\)

(d) **Complaint and Investigation.** The Title IX Coordinator or designee will investigate in accordance with applicable law if the complainant files, or the Title IX Coordinator signs a formal complaint.\(^{58}\) The College may consolidate complaints in appropriate circumstances.\(^{59}\)

1. **Title IX Formal Complaints.** The College will investigate and handle complaints in accordance with Title IX if the allegations meet the Title IX sexual harassment definition.\(^{60}\)

2. **Other Sexual Misconduct Complaints.** The College will investigate and handle complaints that do not meet the Title IX formal complaint criteria in accordance with state law and or the College’s policies and procedures.\(^{61}\)

(e) **Investigation Report and Response.** The College will complete an investigation report after concluding the investigation and provide the report to the parties.\(^{62}\) The parties will have the opportunity to respond in writing to the investigation report.\(^{63}\)

\(^{57}\) 34 C.F.R. § 106.45(b)(1)(v) (delays), (b)(2)(i) (notice of allegations), (b)(5)(v) (hearing times, investigation interviews, other meetings), (b)(8) (written decision), (b)(9) (informal resolution).

\(^{58}\) *Id.* § 106.30.

\(^{59}\) *Id.* § 106.45(b)(4).

\(^{60}\) *Id.* § 106.45(b)(3)(i); see 19 Tex. Admin. Code § 3.9 (College discretion to continue investigation if complainant requests the College not to investigate).

\(^{61}\) Title IX Regulations, Preamble, at 928 (“If the recipient believes that a party violated the recipient’s code of conduct . . . the recipient may investigate the matter under its own code of conduct, but the department does not require such action.”); see Tex. Admin. Code § 3.9 (College discretion to continue investigation if complainant requests the College not to investigate).

\(^{62}\) 34 C.F.R. § 106.45(b)(5)(vii).

\(^{63}\) *Id.* § 106.45(b)(5).
(f) **Advisor.** Parties have the right to consult with an advisor of their choosing. The advisor may be any person, including an attorney, who is not a party or witness involved in the investigation. A party may be accompanied by his or her advisor to any meeting or proceeding related to a complaint under this policy. The advisor may not obstruct any sexual misconduct proceeding but may advise his or her client as needed. Only the advisor may ask cross-examination questions if a hearing is held. The parties are not permitted to cross-examine each other. If a party does have an advisor for a hearing, then the College will provide a third-party attorney advisor to the party for the limited purpose of cross-examination.

(g) **Dismissal.** The College may dismiss the complaint or any allegations under it, if at any time during the investigation or hearing the College determines that: (1) there is no actionable sexual misconduct; (2) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the complaint or any allegations under it; (3) the respondent is no longer employed by the College; (4) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the complaint or allegations under it; or (5) any other reason permitted by applicable law. The College shall send written notice of the dismissal simultaneously to the parties.

(h) **Sexual Misconduct Proceedings.** The College shall determine the appropriate proceeding, according to the sexual misconduct and legal requirements, once it receives or should have received the parties’ written response to the investigation report.

1. **Evidentiary Standard.** A preponderance of the evidence standard must be used in any result proceeding under this section.

2. **Hearing.** The College will arrange for a live hearing to be conducted by a decision-
maker for (1) all Title IX sexual harassment formal complaints;\textsuperscript{78} (2) any other sexual misconduct complaints when the complainant alleges that the respondent committed a physical sexual act without the complainant's consent, including situations where a person is incapable of giving consent; and (3) Clery Act/VAWA sex offenses not covered by Title IX.

3. **Decision.** If a hearing occurs, the decision-maker will render a decision following the hearing.\textsuperscript{79} If no hearing occurs, the decision-maker will render a decision after considering the evidence. The College may make determinations regarding responsibility and sanctions separately.\textsuperscript{80}

4. **Appeal.** Either party may appeal the decision to the Chancellor based on procedural deficiency, newly discovered evidence, or that the outcome was affected by bias or a conflict of interest if the basis for the appeal is related to the decision.\textsuperscript{81}

(i) **Potential Sanctions and Remedies.**\textsuperscript{82} The College shall determine the appropriate sanctions and or remedies if the investigation or hearing reveals sexual misconduct.\textsuperscript{83} The sanction and or remedy may vary depending on the respondent’s status.\textsuperscript{84}

1. **Students:** The College will take appropriate action, including any and all disciplinary actions set forth in the Board Policy section addressing student discipline for non-academic misconduct.\textsuperscript{85}

2. **Employees:** The College will take appropriate action, up to and including immediate employment termination or issuing a notice of forthcoming termination for contract employees.\textsuperscript{86}

3. **Third Parties:** The College will take appropriate action, including immediate severance and termination of any contractual or business relationships.\textsuperscript{87}

\textsuperscript{78} 34 C.F.R. § 106.45(b)(6)(i).
\textsuperscript{79} Id. § 106.45(b)(7)(i) (“The decision-maker . . . must issue a written determination regarding responsibility.”).
\textsuperscript{80} Office for Civil Rights, *The Department’s Title IX Rule Provides Flexibility to Schools with Respect to Decision-makers*, Office for Civil Rights Blog (Sept. 3, 2020), https://www2.ed.gov/about/offices/list/ocr/blog/20200903.html.
\textsuperscript{81} 34 C.F.R. § 106.45(b)(7)(i)–(x).
\textsuperscript{82} The policy approved by the governing board must include “sanctions for violations.” Tex. Educ. Code § 51.282(a)(1)(B); 19 Tex. Admin. Code § 3.4(a).
\textsuperscript{83} 34 C.F.R. § 106.45(b)(1)(vi) (“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”).
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} Id.
\textsuperscript{87} Id.
(j) **Retaliation Prohibited.** The College does not tolerate retaliation against anyone who reports sexual misconduct or cooperates in a sexual misconduct investigation to the extent authorized by law. No College community member may retaliate against a person because of that person’s sexual misconduct complaint, exercise of his or her right to file a sexual misconduct complaint, use of any of the related processes the College provides, cooperation with an investigation, or testimony or other evidence offered by that person connected to a complaint.

(k) **Other Proceedings.** The College may engage in additional proceedings, including parallel proceedings, relating to a sexual misconduct report or information discovered during an investigation. The College will not discipline good-faith student complainants or student witnesses of sexual misconduct for Board Policy violations disclosed during the proceedings.

(l) **Privacy.** The College supports the parties’ privacy interest in sexual misconduct cases. Except for disclosures required by law, the College will release information regarding such cases only to the parties, their advisors, and to individuals responsible for preparing the College’s response.

**IX.B. Convicted Sex Offender Registration**

**IX.B.1.1. Policy**

Texas Code of Criminal Procedure Article 62.153 mandates that each person required to register as a sex offender, and who intends to be employed, work with a contractor, or attend classes at the College, must register with the College’s Police Department at least seven (7) days before reporting to any College location.

As part of this registration, the individual must submit information pertinent to his or her offenses, which will be forwarded to the College’s Review Committee for a determination of eligibility for employment, vendor services, or enrollment. A person seeking to be enrolled as a student must first be approved before completing the registration process.

Failure to register and receive necessary approval under this section may result in immediate suspension, dismissal, or termination of employment.

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88 Tex. Educ. Code § 51.282(a)(1)(D) (The policy approved by the governing board must include “interim measures to protect victims . . . including protection from retaliation.”); 19 Tex. Admin. Code § 3.18 (prohibiting retaliation against employees who in good faith report or cooperate with the sexual misconduct investigations and other procedures).

89 See 34 C.F.R. § 106.71(a); see also Tex. Educ. Code § 51.257(a); 19 Tex. Admin. Code § 3.18(a); see also Tex. Educ. Code § 51.257(b); 19 Tex. Admin. Code § 3.18(b) (Sets out the exceptions to the retaliation prohibition).

90 See 34 C.F.R. § 106.71(a); see also Tex. Educ. Code § 51.254; 19 Tex. Admin. Code § 3.5(e)-(f).

91 34 C.F.R. § 106.45(b)(3)(i).


93 See 34 C.F.R. 106.71(a); see also Tex. Educ. Code §§ 51.256, .291(a), (c); 19 Tex. Admin. Code § 3.17.