I. Purpose
South Texas College respects the equal dignity and worth of every member of its community. The College is dedicated to fostering an environment free from discrimination, harassment, sexual misconduct, and retaliation and has developed this policy, and accompanying grievance and disciplinary procedures, in order to ensure a prompt, fair, and equitable resolution for all parties involved. This policy applies to all types of discrimination covered in the College’s Non-Discrimination Notice.

II. Non-Discrimination
South Texas College does not discriminate or tolerate discrimination against any employee, applicant for employment, student, or applicant for admission on the basis of race, color, national origin, ethnicity, religion, age, sex, sexual orientation, gender, gender identity, gender expression, pregnancy, parental status, disabilities, genetic information, veteran status, or any other protected category under applicable local, state, or federal law. Any member of the College community whose acts deny, deprive, or limit any other member’s access to employment or educational programs or activities violates this policy. A violation of this policy by any person is subject to disciplinary action up to and including expulsion from the College or termination from employment.

III. Discriminatory Harassment
Harassment can take many forms and can affect both educational and employment opportunities. Harassment is unwelcome, physical, verbal, or nonverbal conduct, and may include off-campus or online conduct. Some examples of harassment are: name-calling, graphic images, written statements, and other unwelcome conduct that may be humiliating, physically threatening or harmful. When such conduct creates a hostile environment and limits or denies an individual’s educational or employment access, benefits, or opportunities, it is a violation of this policy subject to disciplinary action or termination, unless it is determined to be constitutionally protected expression. The College reserves the right to address any offensive conduct with supportive measures, respectful conversation, education, remedial actions, or other informal resolutions, whenever appropriate and especially if a substantial in-program disruption has occurred.

IV. Sexual Misconduct
South Texas College is committed to eradicating all forms of sex-based discrimination. In addition to sex-based discriminatory harassment subject to section III above, sex-based discriminatory harassment may also include acts of sexual misconduct. Sexual misconduct can occur in any sex or gender configuration without regard to gender identity, gender expression or sexual orientation and this policy shall be applied without regard to such. This policy is made in accordance with federal and state laws and regulations (such as Title IX) and may include off-campus or online conduct. Any person who violates this policy is
subject to disciplinary action up to and including expulsion from the College or termination from employment. The following acts are covered by this policy:

1. **Sexual Harassment defined by Federal Law (Title IX) means:**
   
   a) 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;
   
   b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
   
   c) Sexual assault, dating violence, domestic violence, or stalking (as defined in the Clery Act).

2. **Sexual Harassment defined by Texas State Law means 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.
   
   c) Dating violence, sexual assault, or stalking (as defined by the Clery Act).

3. **Sexual Assault, Dating Violence, Domestic Violence and Stalking**
   
   These include offenses that meet the definition of rape, fondling, incest or statutory rape, stalking and intimate partner violence as used in the Federal Bureau of Investigation’s Uniform Crime Reporting Program. For more detailed definitions, please request more information from the Title IX Coordinator.

4. **Sexual Violence and Consent, Coercion, & Incapacitation**

   Sexual violence is a form of sexual harassment or sexual assault that includes physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent.

   **Consent**

   Consent is knowing, voluntary, and clear permission, by word or action, to engage in mutually agreed upon sexual activity. It is the responsibility of each
party to make certain that the other has consented before engaging in the activity. Consent can be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated and the activity should cease immediately or within a reasonable time. Resistance is a clear demonstration of non-consent as is knowing that the other person is incapacitated and unable to provide consent.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. In Texas, the age of consent is 17. Sexual activity with someone without clear consent constitutes a violation of this policy.

**Coercion**

Coercion is unreasonable pressure for sexual activity. When someone makes clear they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive and is a violation of this policy.

**Incapacitation**

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent. Incapacitation may be due to a person’s use of drugs or alcohol; due to an intellectual, mental or physical disability; or due to their state of sleep or unconsciousness. A person who engages in sexual activity with someone whom the individual knows, or reasonably should know, is incapable of knowingly giving consent violates this policy. Intoxication of the individual alleged to have violated this policy is not a defense.

5. **Sexual Exploitation**

Sexual exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Some examples of sexual exploitation include, **but are not limited to**:

- Taking pictures, video or audio recordings of another in a sexual act, nudity, or in any other sexually-related activity.
- Disseminating pictures of a sexual nature without the photographed person’s consent.
- Exposing one’s genitals or breasts in non-consensual circumstances or inducing another to expose their genitals or breasts.
6. Policy on Consensual Relationships

The College prohibits employees in supervisory roles from entering consensual romantic or sexual relationships with any subordinate employee under the supervisor’s direct or indirect supervision and prohibits faculty members from entering consensual romantic or sexual relationships with any student enrolled in the faculty member’s class. Employees with direct teaching, supervisory, advisory, or evaluative responsibility over other employees, students and/or student employees recognize and respect the ethical and professional boundaries that must exist in relationships with students or employees of the College.

Employees in supervisory roles are prohibited from explicitly or implicitly suggesting or recommending to a subordinate employee that the employee transfer or be transferred to another position or that the subordinate employee leave employment with the intention of circumventing this policy.

A faculty member is prohibited from explicitly or implicitly suggesting or recommending to a student enrolled in the faculty member’s class to drop the class or withdraw from enrollment in the College with the intention of circumventing this policy.

7. Victim’s Rights Statement

All victims have a right to a prompt and equitable resolution of reports of violations of this policy. South Texas College encourages victims of sexual assault, dating violence, domestic violence or stalking, to go to a hospital for treatment and preservation of evidence as soon as practicable after the incident.

V. Retaliation

It is prohibited for any person to take any adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual 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, or to interfere with any privilege provided under Title IX. Retaliation of any form is a separate violation of this policy. Acts of alleged retaliation should be reported immediately in order for the College to attempt to eliminate the adverse action.

VI. False Complaints
Any person who files a false complaint knowingly or with the intent to harm or deceive is subject to disciplinary action up to and including dismissal or expulsion from the College. Pursuant to Texas law, an employee who commits such an offense must be terminated from employment with the College.

VII. Reporting

A. Mandatory Reporting of Sexual Harassment
All employees of South Texas College, unless subject to an exception described below, are hereby mandatory reporters for all actual or suspected instances of sexual harassment and must promptly share with a Title IX Coordinator or their designee all known details of a report made to them in the course of their employment. Employees are required to report an incident regardless of the when or where the incident occurred.

NOTE: Pursuant to Texas state law, an offense for failure to report is a Class B misdemeanor. However, if it is shown that the actor intended to conceal the incident that the actor was required to report the offense is a Class A misdemeanor. In such cases, the College shall terminate the employment of an employee who commits such an offense.

When a mandatory reporter receives a report of an incident, they must:

1. Advise the individual of the employee’s obligation to report any information the individual reveals to the Title IX coordinator;
2. Explain to the individual of their option to ask that the institution consider maintaining the confidentiality of that information, but that the institution may not be able to guarantee confidentiality, and
3. Offer the individual the option to instead share this information with counselor, ombuds, clergy, victim’s advocacy groups, medical providers, attorneys, or other resources who may provide higher levels of confidentiality.

B. Exceptions to Mandatory Reporting – Confidential Employees
Counselors, ombuds, medical providers, or advisors (as described below in section VII. E) are considered “confidential employees” as persons with whom students may speak
confidentially concerning any matter, including sexual harassment, sexual assault, dating violence, or stalking. Confidential employees will not share information with the Title IX Coordinator and will only share statistical data as required by law. When making reports of incidents of sexual harassment, sexual assault, dating violence or stalking, the confidential employee shall state only the type of incident reported and may not include any information that would violate a student’s expectation of privacy.

C. Additional Reporting
All members of the South Texas College community, including students, employees, applicants, vendors, guests and visitors are encouraged to report incidents of prohibited conduct, online, in person, by mail, by telephone, or by electronic mail, or by any other means that results in receipt of the person’s verbal or written report. Such a report may be made at any time (24/7) and may be made anonymously. There is no time limit to file reports but the actions the College can take to resolve complaints may be limited if significant time has passed.

The following person has been designated as the Title IX Coordinator to handle inquiries regarding these non-discrimination policies and/or laws:

Lisa Y. Guerra, Esq.
Institutional Equity Officer, Title IX Coordinator
3201 W. Pecan Blvd., A106
McAllen, TX 78750
(956) 872-2379
TitleIX@southtexascollege.edu

Online reports can be made at: https://www.southtexascollege.edu/report/index.html

D. Actual Knowledge by College Required for Title IX Cases
Actual knowledge to the College means a report made to an “Official with Authority” to institute corrective measures on behalf of the College. The Title IX Coordinator is an official with such authority. Other Officials with Authority to institute corrective measures include: College President, Vice-Presidents, Institutional Equity Officer, Director of Human Resources or Dean of Student Affairs.

E. Confidentiality
In addition to expectation of confidentiality as explained in section B above, pursuant to Texas state law, the identity of an alleged victim, a reporting party, or an alleged respondent, to an incident of sexual harassment, sexual assault, dating violence or stalking, is confidential and is not subject to disclosure unless waived in writing by the person. The identity may be disclosed only as required by law, as permitted by the
Family Educational Rights and Privacy Act or to carry out the purposes of Title IX or relevant state laws including: alleged perpetrator(s) if required by law, persons tasked by the College to conduct an investigation, hearing or other proceeding arising under this policy; law enforcement officers who must conduct a criminal investigation of the report; or a health care provider in an emergency situation, as determined by the College.

F. Reporting to Law Enforcement

Nothing in this policy is intended to limit the right of any person to file a criminal complaint with the law enforcement authorities in conjunction with a complaint under this policy. Complaints may also be filed with other local law enforcement authorities or with South Texas College's Department of Public Safety at (956) 872-4444 at or call 911 (for emergency services). Victims of a crime may choose to report the crime to law enforcement and may request that the College assist with such reporting, but they are not required to do so.

Employees and students with existing protective or restraining orders are encouraged to provide a copy to the Department of Public Safety.

G. State and Federal Reporting

Complaints may also be filed with the following federal and state agencies. Nothing in this policy shall be construed as extending the time period provided by law for an employee to file any charge or complaint of discrimination with outside agencies.

For Students:

Office of Civil Rights
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810
Telephone: 214-661-9600/TDD#: 1-800-521-2172
OCR.Dallas@ed.gov

Office for Civil Rights, National Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: (800) 241-3481
Fax: (202) 453-6012
OCR@ed.gov
Or online at: https://ocrcas.ed.gov/welcome-to-the-ocr-complaint-assessment-system
For Employees:

U.S. Equal Employment Opportunity Commission
San Antonio EEOC Field Office
Legacy Oaks, Building A
5410 Fredericksburg Road, Ste. 200
San Antonio, TX 78229
Telephone: (800) 669-4000

Online information available at: https://www.eeoc.gov/how-file-charge-employment-discrimination

Texas Workforce Commission
Civil Rights Division
101 E. 15th Street, Room 144-T
Austin, TX 78778-0001
Telephone: (512) 463-2642

Online information available at: https://www.twc.texas.gov/jobseekers/how-submit-employment-discrimination-complaint

VIII. Grievance Resolution Process

A. Initial Assignment
Complaints will be received by the Office of Institutional Equity and categorized appropriately based on the alleged violations. Complaints will fall into the following categories:

- Sexual Misconduct or sex-based discrimination
- Discriminatory Harassment (other than sex-based discrimination)
- Student Conduct
- Constitutionally protected expression
- Other non-discriminatory complaints (such as personal injury, workers’ compensation or other incidents not based on discrimination or infringement of rights)

Cases involving student conduct or constitutionally protected expression are governed by the Student Code of Conduct and will be forwarded to the Office of Student Rights and Responsibilities. Cases involving employees that do not involve discrimination, harassment or retaliation will be forwarded to the Office of Human Resources.
All other cases will be coordinated by the Office of Institutional Equity and will be resolved by Informal Resolution, Mediation, Informal Hearing, or a Live Hearing, as agreed to by all parties or as required by law.

Cases involving sexual misconduct in violation of section IV above that are governed by Title IX regulations will be coordinated by the Title IX Coordinator or a Deputy Title IX Coordinator and may be resolved by Informal Resolution following a formal complaint, if agreed to by all parties in writing, or by a Live Hearing incorporating cross-examination of the parties by advisors. Title IX cases will be handled by staff who have received training in compliance with Title IX regulations and who are free from bias or conflicts of interest against any party or witness.

B. Formal, Signed Complaint Required for Title IX cases by Complainant or Title IX Coordinator

In cases of discrimination involving sex-based discrimination subject to the provisions of Title IX, a formal complaint signed by the Complainant is required for an Informal Resolution or to begin an investigation leading to a Live Hearing. A Complainant may withdraw a complaint at any time.

In Title IX cases where the College receives an anonymous report, where a Complainant withdraws their complaint, or where a Complainant refuses to further participate in the process, the Title IX Coordinator may sign a formal complaint commencing the grievance resolution process in order to ensure that matters which pose a threat to the educational, employment, or other opportunities provided by the College, are addressed.

C. Optional Risk Assessment

Upon receiving a report of conduct that may violate this policy, the Title IX Coordinator or their designee may refer a party for an individualized risk assessment by the College’s Behavioral Intervention Team (BIT).

D. Supportive Measures

The College will offer supportive measures to protect all those reported to be victims of any form of sexual misconduct during the pendency of the grievance resolution process, including, but not limited to: protection from retaliation, interim no-contact orders, academic support (such as dropping courses without academic penalty), alternative work arrangements, campus safety escorts, referrals to counseling, community-based service providers, or any other action deemed appropriate. To the greatest extent practicable, referrals to counseling will be offered by a counselor who does not provide counseling to any other person involved in the incident.
E. Provision of Advisors
All parties have the right to an advisor of their choice in Title IX matters. Advisors may be allowed for other cases as well subject to these policies. Advisors may be attorneys, faculty member, staff member, family member, friend or any other support person. Parties who desire more than one Advisor must request so as early as possible within the resolution process and if more than one Advisor is allowed for one party, the other party will be allowed the same number of Advisors. No more than two Advisors per party will be allowed unless justification in writing is provided to the College. Parties may choose not to use an advisor in any stage of the grievance resolution process except that parties must have an advisor who must conduct cross-examination of other witnesses if a Live Hearing is conducted in a Title IX case. If no advisor is selected by a party before a Live Hearing, the Title IX Coordinator will appoint an advisor who will conduct the cross-examination.

Advisors must be willing and available to serve as an advisor. Advisors will be provided information about the grievance resolution process. Advisors who are otherwise mandatory reporters (as described in section VII. A.) above will be temporarily exempt from mandatory reporting solely for the matter in which they serve as an advisor.

F. Notice of Allegations and Investigation
Before commencement of the grievance resolution process, notice of the allegations must be provided to an alleged respondent for a Title IX matter. Such notice may not be provided if the complainant is only seeking supportive measures without the filing of a formal complaint or if a complainant withdraws their complaint prior to commencement of the grievance resolution process with no impact upon the alleged respondent.

In non-Title IX cases, notice of alleged violations will be provided to the alleged respondent before disciplinary action or other sanctions are assessed.

G. Informal Resolution
Upon receipt of a formal complaint for Title IX cases, or any time after receiving a report of a violation in all other cases, the Title IX Coordinator or Institutional Equity Officer may facilitate an informal resolution amenable to all parties involved as follows:
1. By providing supportive measures to the Complainant that remedy the situation;
2. When the Respondent agrees to responsibility for a violation and accepts a sanction amenable to all parties; or
3. When the parties agree to a mediation.
All parties must voluntarily agree to the informal resolution in writing and no party will be pressured to participate. The parties may choose to stop the Informal Resolution process at any time and request another form of resolution, however, a Live Hearing is required for Title IX matters if an Informal Resolution cannot be reached. An Informal Hearing will be conducted for all other non-Title IX cases that are not resolved by other means.

H. Investigations
Investigations will be conducted in accordance with all applicable laws, regulations and policies. Title IX cases will be investigated by investigators who have received training in compliance with Title IX regulations. Investigations may involve interviews with parties or witnesses; obtaining available, relevant evidence; or identifying sources of expert information, as necessary.

For Title IX cases, a 10-day review period will be provided to parties to review a draft investigation report including relevant evidence and for the opportunity to provide additional feedback, evidence, or witnesses. After this 10-day period, the investigator will update the investigative report, if necessary, and the Title IX Coordinator or their designee will provide the parties with a final investigative report at least ten (10) days prior to a Live Hearing.

I. Hearings
Once an investigation is complete and if an Informal Resolution does not resolve the matter, the case will be referred for a hearing.

1. Policy applicable to all Hearings
Hearings conducted under this policy will be heard by a Hearing Office or a Panel of three (3) members determined at the discretion of the Title IX Coordinator or the Institutional Equity Officer.

All hearings are subject to the preponderance of the evidence standard of proof.

2. Formal, Live Hearings for Title IX Cases
A formal hearing will occur no less than ten (10) business days after a final investigative report is issued to the parties, unless all parties, advisors and staff involved agree to an expedited hearing. Title IX hearings must be live and must be recorded.

3. Informal Hearings for non-Title IX Cases
Informal Hearings will not be recorded and may only involve one party if the other party does not choose to attend. If both parties do not attend an informal hearing,
the Hearing Officer or Panel will make a determination on all of the evidence available.

More information about the procedure for all hearings is available by contacting the Title IX Coordinator or their designee, the Office of Institutional Equity, or here: https://www.southtexascollege.edu/about/pdf/Complaint_and_Grievance_Procedures.pdf

J. Notice of Outcome and Sanctions

1. For Title IX Hearings
   Once a hearing has been conducted, the Hearing Officer or Panel members will deliberate and issue a finding of responsibility for each alleged violation in a written deliberation statement that will include the determination, rationale, the evidence relied upon in support of the determination, any evidence not relied upon, credibility assessments and recommendations for sanctions.

   The written deliberation statement will then be shared with the Title IX Coordinator who will work with the Hearing Office to prepare a Notice of Outcome, including any applicable sanctions, to be provided to the Parties.

2. For non-Title IX Hearings
   The Hearing Officer or Panel will deliberate and issue a finding of responsibility for each alleged violation, rationale for the decision, and recommended sanctions. Either the Hearing Officer or the Institutional Equity Officer will finalize the Notice of Outcome to be issued to the Parties.

3. Disciplinary Actions and Sanctions
   For a list of sanctions that may be imposed upon responsible parties who are students, please refer to the Student Handbook/Code of Conduct or here: https://www.southtexascollege.edu/pdf/Student_Handbook.pdf

   For a list of disciplinary actions that may be imposed upon responsible parties who are employees, please refer to the Employee Handbook or here: https://admin.southtexascollege.edu/president/policies/pdf/4000/4911.pdf

K. Appeals
   Parties may appeal the Notice of Outcome for any type of hearing within ten (10) business days of receipt of the Notice of Outcome. Appeals are limited to the following bases:

   1. Procedural irregularity;
IX. **Applicable Laws and Regulations**

This policy governs complaints or grievances by any member of the college community in accordance with the following laws and regulations:

**Title IX of the Education Amendments Act of 1972 (Title IX)**
As required by Title IX (34 C.F.R. §106.8(b)), South Texas College does not discriminate on the basis of sex in any educational program or activity which it operates. This extends to applicants for admission or employment.

**Title VI of the Civil Rights Act of 1964 (Title VI)**
Title VI is a federal law that prohibits education institutions from discriminating against a member of the community based on race, national origin or color.

**Title VII of the Civil Rights Act of 1964 (Title VII)**
Title VII is a federal law that prohibits employers from discriminating against employees on the basis of sex (including gender identity and sexual orientation), race, color, national origin, and religion.

**Section 504 of the Rehabilitation Act of 1973/American with Disabilities Act of 1990**
The College complies with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act and does not discriminate on the basis of a disability in the areas of admissions, employment, or applicants for admission or employment.

**Age Discrimination in Employment Act of 1967 (ADEA)**
The ADEA protects individuals who are 40 years of age and older from discrimination with respect to any term, condition, or privilege of employment, such as hiring, promotion, demotion, firing, pay, or fringe benefits.

**Chapter 21 of the Texas Labor Code (Texas Commission on Human Rights Act of 1983)**
The Texas Human Rights Act protects individuals from discrimination because of a person’s race, color, disability, religion, sex, national origin, or age.

**Senate Bill 212 (Texas Education Code Section 51.282)**
Senate Bill 212 mandates that all employees who witness or receive information about an incident of sexual misconduct involving a current student or employee to promptly report
the incident- including all relevant information - to the Title IX coordinator or their designee.

**House Bill 1735 (Texas Education Code Section 51.282)**
House Bill 1735 requires the College’s sexual harassment policy to include definitions of prohibited behavior, sanctions for violations, protocols for reporting and responding to reports of sexual harassment, interim measures to support victims, and language about victims’ rights. Some of the bill’s other requirements include trauma-informed training for police officers, continuation of the grievance process even upon withdrawal or graduation of a party, and development of a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence and stalking.

If you have questions about your rights under any of these laws or for more information, please contact:

Lisa Y. Guerra, Esq.
Institutional Equity Officer, Title IX Coordinator
South Texas College
3201 W. Pecan Blvd., A106
McAllen, TX 78501
(956) 872-2379
OIE@southtexascollege.edu

**X. Periodic Review of Policy**
The College’s Board of Trustees will review this policy each biennium and will revise the policy as necessary.

**XI. History**

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