Title	**Harassment, Discrimination, And Sexual Misconduct**	**4216**
Legal Authority	**Approval Of The Board Of Trustees**	**Page 1 of 13**
Date Approved By Board	**Board Minute Order Dated May 26, 2015** **As Amended By Board Minute Order Dated December 15, 2015** **As Amended By Board Minute Order Dated April 26, 2016** **As Amended By Board Minute Order Dated April 24, 2018**	

I. Purpose

South Texas College is committed to providing an environment that respects the dignity and worth of every member of its community. Members of the campus community are entitled to an educational, learning, and working environment free of harassment, discrimination, sexual misconduct, and retaliation. To ensure compliance with federal and state civil rights laws and College policies, the College has developed internal policies that will provide a supportive process for individuals who report harassment, discrimination, sexual misconduct, and retaliation. These laws include, but are not limited to, Title II of the Americans with Disabilities Act of 1990, Title VII of the 1964 Civil Rights Act; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013, and H.B. 699 84th Legislature.

Nothing in this Policy is created to impair academic freedom and inquiry, principles of free speech, or the College's educational mission.

II. Non-Discrimination

The College prohibits discrimination, including harassment, against any employee, applicant for employment, student or applicant for admission on the basis of any protected class or any other basis prohibited by law. Protected classes at South Texas College include: race, color, national origin, religion, age, sex, sexual orientation, gender, gender identity, physical or mental disability, genetic information, veteran status or any other basis prohibited by law.

Discrimination is defined as prohibited conduct directed at an employee or student on the basis of race, color, national origin, religion, age, sex, including pregnancy and parental status, sexual orientation, gender, gender identity, physical or mental disability, genetic information, veteran status, or any other basis prohibited by law, that adversely affects the employee's employment or that adversely affects the student.

III. Pregnancy and Parenting

The College prohibits discrimination on the basis of sex, including pregnancy and parental status, in any educational activity or program.

Employee:

The College prohibits discrimination on the basis of sex. The term ‘on the basis of sex' includes, but is not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

Student:

The College specifically prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. The College prohibits applying any rule related to a student’s parental, family, or marital status that treats students differently based on their sex.

The College prohibits excluding a pregnant student from participating in any part of an educational program. This prohibition applies to specific classes such as advanced placement or honors classes, extracurricular programs, interscholastic sports, honor societies, and opportunities for student leadership, among other activities. Pregnant students shall be allowed to participate in classes and extracurricular activities without having to present a doctor’s note.

In addition, the College shall excuse a student’s absences because of pregnancy or childbirth for as long as the student’s doctor deems the absences medically necessary. When a student returns to school, the student must be allowed to return to the same academic and extracurricular status as before the medical leave began.

Pregnant students shall be provided reasonable academic, physical, and policy based adjustments necessary because of pregnancy, such as larger desks, elevator access, and more bathroom breaks as necessary. Pregnant students and those with medical needs following pregnancy or related conditions are to be provided support and accommodations in the same way as the college provides support for all temporary disabilities.

IV. Prohibited Conduct

South Texas College prohibits harassment, discrimination, sexual misconduct, and retaliation, even if the behavior does not rise to the level of criminal conduct. Specific acts of prohibited conduct are described in this policy. Prohibited conduct, by any employee or student, is subject to disciplinary action up to and including dismissal or expulsion from the College.

A. Harassment

Employee:

Prohibited harassment of an employee is defined as unwelcome physical, verbal, or nonverbal conduct based on an employee's race, color, national origin, religion, age, sex, sexual orientation, gender, gender identity, physical or mental disability, genetic information, veteran status, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive and objectively offensive that the conduct unreasonably interferes with, denies or limits an employee's opportunities in the work environment or ability to participate in or benefit from the activities of the College.

Student:

Prohibited harassment of a student is defined as unwelcome physical, verbal, or nonverbal conduct based on the student's race, color, national origin, religion, age, sex, sexual orientation, gender, gender identity, physical or mental disability, genetic information, veteran status, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive and objectively offensive that the conduct unreasonably interferes with, denies or limits student's ability to participate in or benefit from the educational programs and/or activities of the College.

B. Sexual Harassment

South Texas College assumes an affirmative position to prevent and eliminate sexual misconduct, including sexual harassment in any division, department, or any unit by any individual. It is the policy of South Texas College to provide an educational and working environment for its students, faculty, staff, guests and visitors that is free from sex discrimination and sexual harassment. It is the policy of the College that any practice or behavior that constitutes sexual harassment will not be tolerated.

Sexual Harassment is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of sexual nature when submission of such conduct:

- creates a hostile environment, that is intentionally directed towards a specific individual or a group of individuals, that is sufficiently severe, persistent, or pervasive and objectively offensive that unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the education or employment, and/or activities or other benefits of the College;
- based on power differentials (quid pro quo), which refers to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or performance; or that is made either explicitly or implicitly a term or condition of a person's student status, employment, or participation in College activities; or

- is retaliation against an individual for raising an allegation of sexual or gender-based harassment, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices, includes but not limited to intimidation, threats, or harassment against any complainant, witness, or third party.

This policy has been developed to reaffirm this principle and to provide recourse for those individuals whose rights have been violated.

C. <u>Sexual Misconduct</u>

This policy prohibits any form of sexual misconduct. Sexual misconduct includes, but is not limited to, behaviors often described as sexual harassment, non-consensual sexual contact, sexual exploitation, sexual violence, rape, stalking, and intimate partner violence, also known as dating violence and or domestic violence. It is a violation of policy and the law, including Title IX, to commit these acts or attempt to commit them. Sexual misconduct can occur in any sex or gender configuration regardless of sex and gender identity whether it be an employee or student.

Any employee or student who is found to have engaged in sexual misconduct shall be subject to appropriate disciplinary action, up to and including dismissal or expulsion and may be prosecuted under State law. This policy shall be applied without regard to the sexual orientation, gender and/or gender identity of the individual(s) involved.

a. <u>Sexual Harassment</u> (as defined in section B)

b. <u>Consensual Relationships</u>

It is the policy of South Texas College that supervisors and faculty shall not enter into any type of consensual romantic or sexual relationship with staff whom they supervise or with students enrolled in their courses.

The College prohibits supervisors 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.

A supervisor is 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.

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.

c. <u>Sexual Violence</u>

South Texas College prohibits any unwelcome physical conduct perpetrated against a person's will or where a person is incapable of giving consent (e.g. due to the person's use of drugs or alcohol, or because an intellectual, mental or physical disability that prevents the person from having the capacity to give consent).

- Prohibited sexual misconduct and sexual violence could be committed by force, intimidation, or use of victim's incapacity (physical, mental, or through use of drugs or alcohol).
- All sexual contact between individuals must be with each person's consent, as defined in Section VII: Consent.

d. <u>Sexual Exploitation</u>

Sexual exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Examples of sexual exploitation include, but are not limited to, engaging in the following activities without the other person(s) consent:

- Invasion of sexual privacy such as sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person observed).
- Non-consensual digital, video or audio recording of nudity or sexual activity.
- Or in any other private activity or disseminating sexual pictures without the photographed person's consent.
- Exposing one's genitals or breasts in non-consensual circumstances or inducing another to expose his or her genitals or breasts.
- Prostituting another person.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person.
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex).
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

e. <u>Stalking</u>

Stalking is a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and that would cause a reasonable person to feel fear.

Stalking can be repetitive and menacing conduct, including pursuit, following, harassing, and/or interfering with the peace and/or safety of another.

f. <u>Other Prohibited Conduct</u>

This policy prohibits other offenses of a discriminatory, harassing, and/or retaliatory nature not included in the previous sections as follows:

- Intimidation, defined as implied threats or acts that cause a reasonable fear of harm in another on the basis of actual or perceived membership in a protected class.
- Hazing, defined under this policy as acts likely to cause physical or psychological harm or social ostracism to any person within the College community when related to the admission, initiation, pledging, joining, or any other group-affiliation activity on the basis of actual or perceived membership in a protected class.
- Bullying, defined under this policy as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class.
- Violation of any other College rule, when it is motivated by sex or gender or the actual or perceived membership of the victim in a protected class, may be pursued using this policy and process.

g. <u>Coercion</u>

Coercion is an unreasonable amount of pressure for sexual activity. When someone makes clear to you that 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.

There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but nonconsensual sexual activity is not by definition forced.

h. <u>Intimate Partner (Dating/Domestic) Violence</u>

Defined as violence by a person who is or has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type and frequency of interaction.

Domestic violence includes offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

i. <u>Non-Consensual Sexual Intercourse</u>

Defined as any sexual penetration or intercourse (anal, oral, or vaginal), however slight, with any object by a person upon another person that is without consent and/or by force.

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation by mouth-to-genital contact or genital-to-mouth contact.

j. <u>Non-Consensual Sexual Contact</u>

Defined as any intentional sexual touching, however slight, with any object by a person upon another person that is without consent and/or by force.

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

V. Hostile Environment

A hostile environment may be created by oral, written, graphic or physical conduct that is sufficiently severe, persistent or pervasive and objectively offensive that interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs, services, opportunities, or activities or the individual's employment access, benefits or opportunities. Mere subjective offensiveness, based on personal opinions, emotions, or point of view, is not enough to create a hostile environment.

In determining whether conduct is severe, persistent or pervasive and objectively offensive, based on facts, measurable, and observable, and thus creates a hostile environment, the following factors will be considered:

i. the degree to which the conduct affected one or more individuals' education or employment;
ii. the nature, scope, frequency, duration, and location of the incident(s);
iii. the identity, number, and relationships of persons involved; or

iv. the perspective of a "reasonable person" in the same situation as the person subjected to the conduct.

VI. Off Campus Conduct

Conduct that occurs off campus, including online activity, may be the subject of a complaint or report and will be evaluated to determine whether it violates this policy or other South Texas College policies. The off campus conduct will be evaluated to determine possible continuing effects that create a hostile environment on campus and whether the conduct occurred in the context of an education program or activity or affects a substantial College interest.

A substantial College interest includes but is not limited to any action that constitutes a criminal offense as defined by law or any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others.

VII. Consent

South Texas College prohibits any physical conduct perpetrated against a person's will or where a person is incapable of giving consent (e.g. due to the person's use of drugs or alcohol, or because an intellectual, mental or physical disability that prevents the person from having the capacity to give consent).

Prohibited sexual misconduct and sexual violence could be committed by force, intimidation, or use of victim's incapacity (physical, mental, or through use of drugs or alcohol).

- Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity.
- For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.
- Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.
- 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.
- The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.

NOTE: In order to give effective consent, one must be of legal age. In Texas, the age of consent is 17.

A. <u>Incapacitation</u>

South Texas College prohibits any unwelcome physical conduct perpetrated against a person's will or where a person is incapable of giving consent (e.g. due to the person's use of drugs or alcohol, or because an intellectual, mental or physical disability that prevents the person from having the capacity to give consent). When the individual seeking sexual access knows or reasonably should have known of the incapacity.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., due to the person's use of drugs or alcohol, because an intellectual, mental or physical disability that prevents the person from having the capacity to give consent or to understand the "who, what, when, where, why or how" of their sexual interaction).

This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or drugs.

An individual who engages in sexual activity when the individual knows, or REASONABLY should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

VIII. Title IX Coordinator

Title IX implementing regulations, provide that each educational institution receiving federal funds shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX including any investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX regulations or alleging any actions which would be prohibited by such regulations. The College hereby designates Mrs. Mary G. Elizondo, 3201 W. Pecan Blvd., McAllen, Texas 78501. Office Location: Annex - Pecan Campus; Second Floor Phone: (956) 872-3558 as the Title IX Coordinator.

Inquiries or complaints may be addressed to the College's Title IX Coordinator. The Title IX Coordinator has primary responsibility for coordinating efforts related to investigation, resolution, and implementation of corrective measures and monitoring to stop, remediate, and prevent harassment, discrimination, sexual misconduct, or retaliation. The Title IX Coordinator will assign the investigation to a Deputy Title IX Coordinator or other appropriate College official.

Title IX Coordinator and Title IX Deputy Coordinator Contact Information:

Title IX Role	STC Employee & Title	Email	Campus Phone
Title IX Coordinator	**Maria G. Elizondo** VP for Finance and Administrative Services	marye@southtexascollege.edu	(956) 872-3558
Title IX Deputy Coordinator	**Brenda J. Balderaz** Director of Human Resources	brendajb@southtexascollege.edu	(956) 872-5057
Title IX Deputy Coordinator	**Janette Garcia** Institutional Equity Manager	jgarcia_3213@southtexascollege.edu	(956) 872-2307
Title IX Deputy Coordinator	**Santa E. Pena** Director of Counseling	santaep@southtexascollege.edu	(956) 872-2140
Title IX Deputy Coordinator	**Paul Varville** Chief Administrator for Department of Public Safety and Regional Center for Public Safety Excellence	pvarvil@southtexascollege.edu	(956) 872-2330

Complaints may also be filed with the Office for Civil Rights, Dallas Office, U.S. Department of Education, 1999 Bryan St., Suite 1620, Dallas, Texas 75201-6810, Telephone: (214) 661-9600

Title IX Statement

Title IX of the Education Amendments 1972 (20 U.S.C. s1681 et seq.) and its implementing regulations, 34 C.F.R. Part 106 (Title IX), "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."

The College strives to maintain a healthy and safe environment where all members of the community, students, faculty and staff feel welcome on College campuses and classrooms. Students, faculty and staff are thus prohibited from conducting themselves in a way that results in any form of sexual harassment, sex- based harassment and/or sexual violence.

IX. Title IX Procedures

Complaint procedures are found at the Office of Human Resources, the Office of Student Rights and Responsibilities, and the South Texas College Title IX website http://www.southtexascollege.edu/about/notices/title-ix.html.

X. Reporting

A. Students are encouraged to report incidents to the Title IX Coordinator or Title IX Deputy Coordinators, the Office of Student Rights and Responsibilities, the Office of the Dean of Student Affairs the South Texas College Department of Public Safety, or file a report online.

B. Guests and visitors are encouraged to report incidents to the Office of Human Resources, to the South Texas College Department of Public Safety, or file a report online.

C. Employees are encouraged to report incidents to the Title IX Coordinator or Title IX Deputy Coordinators, Office of Human Resources, or file a report online.

XI. Responsible Employee

Under Title IX regulations, the South Texas College must designate "Responsible Employees" and must identify "Confidential Employees" to whom students may report incidents of sexual assault, sexual harassment, sex discrimination, retaliation, or other conduct prohibited by this policy (referred to herein as a "Title IX Violation").

Every College employee, except for licensed Counselors, are defined as "responsible employees" and must promptly report incidents of prohibited conduct that come to their attention to either the Office of Human Resources, the Title IX Coordinator, Deputy Title IX Coordinator, or to the South Texas College Department of Public Safety. A "responsible employee" has the duty to report incidents of sexual misconduct to the Title IX Coordinator or other appropriate designee. The responsible employee needs to:

1) advise the individual(s) of the employee's obligation to report any information the individual(s) reveals to the Title IX coordinator,
2) explain to the individual(s) of their option(s) to ask that the institution nonetheless consider maintaining the confidentiality of that information, but that the institution may not be able to guarantee confidentiality, and
3) advise the individual(s) of the ability to instead share this information with counseling, advocacy, health, mental health or other sexual assault-related resources who are not obligated to report it to the Title IX coordinator.

Licensed professional counselors are considered "confidential employees" who are not obligated to report incidents of sexual misconduct to the Title IX Coordinator or other appropriate designee unless the safety of an individual is at risk.

Nothing in this policy is intended to limit the right of any student to file a criminal complaint with the law enforcement authorities in conjunction with a complaint under this policy.

<u>Confidential Employees</u>

If a student desires to report a Title IX violation but desires to preserve confidentiality of the incident and of the student's identity, the student should report the incident to a "Confidential Employee" of the College. With some exceptions, a "Confidential Employee" does not have to report any Title IX complaint brought to his/her attention to the Title IX Coordinator. Reporting a Title IX violation to a "Confidential Employee" does not trigger the College's Title IX obligations to timely investigate the complaint. "Confidential Employees" are not

required to report any information regarding a Title IX violation to the Title IX coordinator or other appropriate school designee in a way that discloses the reporting student's identity.

However, the College must still collect non-identifying information on the incident for reporting and statistical purposes.

XII. Filing of False Complaints

Any person who knowingly and intentionally files a false complaint under this policy is subject to disciplinary action up to and including dismissal or expulsion from the College.

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action up to and including dismissal or expulsion from the College, in accordance with existing policies.

XIII. Effect on Pending Personnel Actions

The filing of a sexual misconduct or retaliation complaint will not stop or delay any evaluation or disciplinary action related to the complainant who is not performing up to acceptable standards or who has violated the College's rules, regulations, or policies.

XIV. Relationship of Complaint Process to Outside Agency Time Limits

The filing of a sexual misconduct complaint under this policy does not excuse the complainant from meeting the time limits of outside agencies.

XV. Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of this policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and/or Title IX Deputy Coordinator(s) and will be promptly investigated. South Texas College is prepared to take appropriate steps to protect individuals who are subjected to retaliation.

Examples of an adverse action include conduct that:

- significantly disadvantages or restricts an individual as to his or her status as a student or employee, or his or her ability to gain the benefits or opportunities of the program;
- discourages one from making a discrimination claim, or
- could act as a deterrent to further protected activity.

The College prohibits retaliation against an employee or student who makes a claim alleging to have experienced discrimination or harassment, or against another employee or student who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.

XVI. Review

The College's Board of Trustees will review this policy each biennium and will revise the policy as necessary.