

MANUAL OF POLICY

Title	Discrimination, Harassment, Retaliation, and Sexual Misconduct	4216
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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	

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 discrimination, harassment, retaliation, and sexual misconduct. To ensure compliance with federal and state civil rights laws, the College has developed internal policies that will provide a supportive process for individuals who report discrimination, harassment, retaliation, or sexual misconduct. 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 Reauthorization Act of 2013, and H.B. 699 84th Legislature.

II. 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.

III. Prohibited Conduct

Prohibited conduct includes discrimination, harassment, retaliation and sexual misconduct as defined by this policy, even if the behavior does not rise to the level of unlawful 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.

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IV. 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. Protected classes 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.

V. 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, unless the College requires a doctor's note from all students who have a physical or emotional condition requiring treatment by a doctor.

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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, she must be allowed to return to the same academic and extracurricular status as before her medical leave began.

Pregnant students shall be allowed to make up work and tests missed because of pregnancy leave.

Pregnant students shall be provided reasonable adjustments necessary because of pregnancy, such as larger desks, elevator access, and more bathroom breaks as necessary.

Any special services provided to students who have temporary medical conditions must also be provided to a pregnant student.

VI. Harassment

Employee:

Prohibited harassment of an employee is defined as 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 that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee's work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee's performance, environment, or employment opportunities.

Student:

Prohibited harassment of a student is defined as 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 that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

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VII. Racial Harassment

Racial harassment occurring in any campus, division, department, or any work unit by any employee or student is unacceptable behavior, and any practice or behavior that constitutes racial harassment will be dealt with appropriately.

Any employee or student who is found to have engaged in such conduct shall be subject to appropriate disciplinary action, up to and including dismissal or expulsion, in accordance with procedural and applicable due process requirements.

Racial harassment in the workplace and schools is an illegal practice under Section 703 of Title VII of the 1964 Civil Rights Act, as amended, and Title IX of the Education Amendments of 1972, as amended.

Examples of conduct that constitutes racial harassment include racially derogatory remarks, racial slurs or any other racially motivated action.

Such conduct is a violation when:

1. The employee's or student's submission to such conduct is an explicit or implied condition of employment or academic efforts; or
2. The employee's or student's response to such conduct becomes a basis for employment or academic decision; or
3. The conduct produces an intimidating hostile, or offensive work or study environment.

Nothing in this policy should be interpreted to prohibit or restrict speech that is permitted by the Texas or U.S. Constitutions.

VIII. Retaliation

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.

IX. Sexual Misconduct

This policy prohibits any form of sexual misconduct. Sexual misconduct includes, but is not limited to, behaviors often described as sexual harassment, sex or gender discrimination, sexual violence, rape, stalking, and relationship violence (including domestic violence and dating 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.

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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 gender of the person involved.

A. Sexual Harassment

South Texas College assumes an affirmative posture 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. This policy has been developed to reaffirm this principle and to provide recourse for those individuals whose rights have been violated.

Sexual Harassment is unwelcome verbal or physical conduct that is,

- sufficiently severe, persistent or pervasive that it, unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational program and/or activities, and is
- based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

1. **Physical conduct** that, depending on the totality of circumstances present, including frequency and severity, may constitute sexual harassment includes, but is not limited to:

- Unwelcome intentional touching; or
- Deliberate physical interference with or restriction of movement.

2. **Verbal conduct** is defined as oral, written, or symbolic expressions that:

- Personally describe or are personally directed at a specific individual or group of identifiable individuals; and
- Are not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea.

Verbal conduct that, depending on the totality of circumstances present, may constitute sexual harassment includes, but is not limited to:

- Explicit or implicit propositions to engage in sexual activity;

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- Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
- Gratuitous remarks about sexual activities or speculation about sexual experiences;
- Persistent, unwanted sexual or romantic attention;
- Subtle or overt pressure for sexual favors;
- Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials;
- Deliberate, repeated humiliation or intimidation based upon sex.

Sexual harassment in the workplace and schools is an illegal practice under Section 703 of Title VII of the 1964 Civil Rights Act, as amended, and Title IX of the Education Amendments of 1972, as amended.

B. Consensual Relationships

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. 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. Consent

Consent is:

- Permission to engage in sexual activity
- Clear, knowing and voluntary, prior to and during sexual activity
- Active, not passive. Silence, in and of itself, cannot be interpreted as consent.

Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

- Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent does not imply consent to future sexual acts.
- In order to give effective consent, one must be of legal age. In Texas, the age of consent

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is 17.

- 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.

D. Coercion

Coercion is unreasonable 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.

E. Incapacitation

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

F. Sexual Exploitation

Defined as taking non-consensual or abusive sexual advantage of another and the conduct does not fall within the definitions of sexual harassment, non-consensual sexual intercourse, or non-consensual sexual contact.

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

- Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person observed).
- Taking pictures or recording another in a sexual act, or in any other private activity (such as allowing another person to hide in a closet and observe sexual 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.
- Prostitution
- Engaging in sexual activity with another person while knowingly infected with human

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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.

G. Dating Violence

Defined as violence by a person who 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.

H. Domestic Violence

Domestic violence includes asserted violent misdemeanor and felony 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. Sexual Violence

Sexual violence is any unwanted 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 prevents the person from having the capacity to give consent). Such conduct includes but is not limited to: sexual assault; sexual exploitation, sexual coercion; and unwanted sexual intercourse (rape).

- 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.

The sexual orientation and/or gender identity of individuals engaging in sexual violence is not relevant to allegations under this policy.

1. Non-Consensual Sexual Intercourse

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.

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2. Non-Consensual Sexual Contact

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.

J. Stalking

Defined as a course of conduct directed at a specific person that would cause a reasonable person to fear for his her, or others' safety, or to suffer substantial emotional distress.

X. Off Campus Conduct

Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy and if off-campus harassment has continuing effects that create a hostile environment on campus.

XI. Other Prohibited Conduct

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.

XII. 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

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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 is not enough to create a hostile environment.

In determining whether conduct is severe, persistent or pervasive, and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals' education or employment; (b) the nature, scope, frequency, duration, and location of the incident(s); (c) the identity, number, and relationships of persons involved; (d) the perspective of a "reasonable person" in the same situation as the person subjected to the conduct, and (e) the nature of higher education.

XIII. Reporting

Students are encouraged to report crimes and incidents to the Conflict Resolution Center, the Office of the Dean of Student Affairs and to report any crime to the South Texas College Police Department.

Guests and visitors are encouraged to report to the Office of Human Resources or to the South Texas College Police Department.

Every College employee, except for licensed Counselors, 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 Police Department.

Incidents and crimes should be reported as soon as possible after the time of their occurrence. No person is required to report sexual misconduct to the alleged offender.

XIV. 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 discrimination, harassment, retaliation, or sexual misconduct. The Title IX Coordinator will assign the investigation to a Deputy Title IX Coordinator or other appropriate College official.

Inquiries or complaints may be addressed to the College's Vice President of Finance and Administrative Services, 3201 W Pecan Blvd, McAllen, TX 78501 Office Location: Annex - Pecan Campus; Second Floor Phone: 956.872.3558.

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

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XV. 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.

XVI. 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.

XVII. 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.

II. Title IX Procedures

Complaint procedures may be found at the Office of Human Resources, the Conflict Resolution Center, and College website

<http://www.southtexascollege.edu/about/notices/title-ix.html>

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