

# Sexual Harassment, Sexual Assault, Dating Violence, and Stalking: New State Mandates for Postsecondary Educational Institutions

# Topics Covered

- What Postsecondary Institutions Must Do
- Definitions
- Policy Information
- Employee Reporting Requirements
- Confidentiality & Victim Rights
- Consequences of Failing to Report or False Reporting
- Retaliation
- Remedies and Support Services
- Administrative Reporting Requirements
- Disciplinary Process
- Withdrawal and Graduation
- Other Institutional Duties

Note: In compliance with Senate Bill 212 and House Bill 1735, 86th Texas Legislature, this training was developed by the Title IX Training Advisory Committee in November 2019. Updated information is noted.

# What Postsecondary Institutions Must Do under the New Law

# What Postsecondary Institutions Must Do

- Adopt policies on sexual harassment, sexual assault, dating violence, and stalking
- Implement new and improved processes for reporting incidents
- Develop comprehensive prevention and outreach programs
- Provide amnesty or immunity to students and employees who report incidents
- Substantially comply with the mandates or be subject to financial penalties for noncompliance

# What about Title IX?

- Title IX — and other federal laws, including Violence Against Women Act (VAWA) and Clery — remain in full force and effect for federal enforcement of sex discrimination impacting any person's access to a federally funded education program, benefit, or activity.
  - **June 2021:** The U.S. Dept. of Education is currently conducting hearings and may propose new and different requirements for compliance with Title IX.
- In 2019, the 86th Texas Legislature enacted two new laws relating to sexual harassment, sexual assault, dating violence, and stalking:
  - Senate Bill 212: authored by Senator Joan Huffman
  - House Bill 1735: authored by Representative Donna Howard

# What has Changed?

- **SB 212** Establishes New Requirements for:
  - Reporting incidents of sexual harassment, sexual assault, dating violence, and stalking by employees of postsecondary institutions
- **HB 1735** Establishes New Requirements that Postsecondary Institutions:
  - Adopt policies on sexual harassment, sexual assault, dating violence, and stalking
  - Provide training to new undergraduate students (first-year and transfers)
  - Develop Prevention and Outreach Programs
  - Provide trauma-informed investigation training to all law enforcement employees
  - And more...



# Sexual Misconduct Policy Mandates

- Each institution shall adopt governing board-approved policy on sexual harassment, sexual assault, dating violence, and stalking applicable to enrolled students and employees.
- The policy **must** include:
  - Definitions of prohibited behavior
  - Sanctions for violations
  - Protocol for reporting and responding to reports which includes electronic reporting
  - Interim measures to protect alleged victims, including protection from retaliation and may allow measures for others involved as needed

# Definition of Terms



# Definitions of Reportable Conduct Sexual Harassment

"Sexual harassment" 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.

(Citation: Texas Education Code, Sections 51.251 & 51.281)

# Definitions of Reportable Conduct

## Sexual Assault

“Sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program:

- (A) “Rape” means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- (B) “Fondling” means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- (C) “Incest” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (D) “Statutory Rape” means sexual intercourse with a person who is under the statutory age of consent.

(Citation: 34 Code of Federal Regulations (CFR) 668.46)

# Definitions of Reportable Conduct

## Dating Violence

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

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

(B) For the purposes of this definition—

(1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(2) Dating violence does not include acts covered under the definition of domestic violence.

(Citation: 34 CFR 668.46)

# Definitions of Reportable Conduct

## Stalking

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

- (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(Citation: 34 CFR 668.46)

# Policy on Sexual Misconduct, to include Sexual Harassment, Sexual Assault, Dating Violence, and Stalking

# Sexual Misconduct Policy Mandates - 1

- Each policy **must** include:
  - The importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident
  - The right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report
  - The right of the victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime, or to decline to report the crime to law enforcement
  - Note: See “Title IX Coordinator Sexual Misconduct Policy Checklist” in the Training Appendix.

# Sexual Misconduct Policy Mandates - 2

Each institution **shall** review its sexual harassment, sexual assault, dating violence, or stalking policy at least every two years and shall revise the policy and obtain approval from the institution's governing board.

# Sexual Misconduct Policy Mandates - 3

- Your institution's policy **must**:
  - Be in the student and personnel/faculty handbooks or institutional equivalents
  - Have a webpage dedicated to the policy
  - Include a clearly identifiable link on the institution's homepage



# Sexual Misconduct Policy Mandates - 4

- Each institution **must** require each freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy.
  - Before or during the first semester or term of enrollment
  - This orientation may be online

# Sexual Misconduct Policy Protocol

- As part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, or stalking, each institution **must**:
  - To the greatest extent practicable based on the number of counselors employed, ensure each alleged victim, alleged perpetrator, and reporters of such incidents has access to counseling provided by a counselor who is not providing counseling to others involved in the incident
  - Allow an alleged victim or alleged perpetrator to drop a course in which both parties are enrolled without academic penalty

# Sexual Misconduct Outreach Program - 1

- Each institution **must** develop a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, or stalking for enrolled students and employees which provides:
  - a range of strategies to prevent sexual harassment, sexual assault, dating violence, or stalking
  - a public awareness campaign
  - a victim empowerment program
  - primary prevention, bystander intervention, and risk reduction strategies
  - Note: See Centers for Disease Control and Prevention website at:  
<https://www.cdc.gov/violenceprevention/sexualviolence/>

# Sexual Misconduct Outreach Program - 2

- This program shall also provide information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, or stalking, including the name, office location, and contact information for the Title IX Coordinator and which must:
  - Email the information to students at the beginning of the semester or term
  - Include the information in orientation which may be online

# Equal Access - 1

Postsecondary educational institutions shall ensure equal access for disabled employees and students.

- Institutions shall make reasonable efforts to consult with the disability services office of the institution and/or advocacy groups to ensure access for disabled (*differently-abled*) students and employees.
- Institutions should ensure websites, policies, and forms are accessible to disabled (*differently-abled*) employees and students.

# Equal Access - 2

*Example: A student who is blind wishes to report an incident to the Title IX Coordinator.*

*The Title IX Coordinator must ensure the student has equal access to reporting forms, websites, and policies.*

# Employee Reporting Requirements

# New Reporting Requirements - 1

- All employees\* must promptly report to the institution's Title IX coordinator or deputy coordinator:
    - Observations witnessed or information received while in the course and scope of their employment;
    - That the employee reasonably believes constitutes an incident of sexual harassment, sexual assault, dating violence, or stalking;
    - Committed by or against
      - A student who was enrolled at the institution at the time of the incident
      - An employee employed by the institution at the time of the incident
- \* Four categories of employees are excepted from mandatory reporting.



# New Reporting Requirements - 2

*Example: An accountant in the business office is out to eat at a restaurant with friends on a Saturday evening. During dinner, the accountant overhears someone from the next table talking about working at your institution and being groped by their supervisor. Does the accountant have to report to the Title IX Coordinator?*

*The Texas law would not require the accountant to report, because the accountant was engaged in a personal activity at the time they heard the information and was not performing duties to further the institution's interests. However, the institution's policy may impose different requirements.*

# What must be reported by an employee? - 1

- **ALL INFORMATION**, unless the report is made to an employee who is designated or licensed to maintain confidentiality.
- An employee must report:
  - All information relevant to the incident known to the employee
    - Regardless of when or where the incident occurred
    - For purposes of the institution's investigation
    - To redress the incident via interim measures or other forms of support
    - To convey an alleged victim's request for confidentiality

# What must be reported by an employee? - 2

*Example: A lecturer shares with their department chair that a tenured faculty member in the department made unwanted sexual advances toward the lecturer. The lecturer asks the department chair to keep the concern anonymous. Can the department chair withhold the lecturer's name when making the report to the Title IX Coordinator?*

*No. The department chair must share all information known to them with the Title IX Coordinator. The department chair should indicate that the lecturer wishes to remain anonymous, and the Title IX Coordinator will take that into account in moving forward with the matter.*

# Circumstances in which Employees Must Report - 1

- Employees **shall promptly report** information regarding the occurrence of an incident the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking committed by or against a person who was or is a student or employee of the institution at the time of the alleged misconduct.
- The employee shall report information that they witness, receive first hand, receive second hand or via “hearsay,” overhear, or are otherwise made aware of.

# Circumstances in which Employees Must Report - 2

- The employee is required to report regardless of when or where the incident occurred.
  - The exception is when incidents are disclosed at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by the institution or by a student organization affiliated with the institution.
- The employee is required to report all known details, including if and how the report was remedied and if the alleged victim has expressed a desire to keep the report confidential.

# Circumstances in which Employees Must Report - 3

*Example: Professor Crane receives an email from a student explaining that they had missed class due to being attacked by an ex. The professor contacts the Title IX Coordinator asking if the professor needs to report, as there were very few details included in the student's email. The professor explains they are not sure of when or where the attack happened, or if it involved a student from their institution.*

*Professor Crane should report regardless of when or where the incident occurred, as it involves a student who is enrolled at the institution. Even if there are very few details, Professor Crane should include them all.*

# Where should reports be made? - 1

- Reports may be made:
  - Online
    - INSERT LINK TO REPORTING FORM
  - To the institution's Title IX Coordinator
    - INSERT TIX COORD. INFO
  - To the institution's Deputy Title IX Coordinators
    - INSERT TIX DEPUTY INFO

# Where should reports be made? - 2

- In addition to the aforementioned reporting options, students and employees may report incidents in which they were a victim of sexual harassment, sexual assault, dating violence, or stalking in confidence to:
  - INSERT DESIGNATED CONFIDENTIAL RESOURCE (STUDENTS VS ALL)
  - INSERT HEALTH PROFESSIONAL
  - INSERT COUNSELING CENTER
  - INSERT MEDICAL RESOURCE
  - INSERT ADVOCACY CENTER
  - INSERT CLERGY



# Online Reporting Option for Students & Employees

An online reporting option must be available for enrolled students and current employees. The reporting option, at a minimum, **must:**

- be accessible on the institution's website homepage via a clearly identifiable link
- allow for anonymous reporting
- allow for reporting of allegations of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee
- be accessible to differently-abled persons

# Employees Excepted: Category 1

## Employees Who are Students - 1

- Employees who are enrolled as students at the institution are not mandatory reporters.
  - However, employees *may be* mandatory reporters under their institution's policies, regulations, rules, or procedures.

# Employees Excepted: Category 1

## Employees Who are Students - 2

*Example: The institution designates students who work in student housing as employees who are required to report sexual harassment, sexual assault, dating violence, and stalking. A student tells their resident advisor that the student has been sexually harassed by a staff member. Is the resident advisor required to report?*

*The resident advisor is required by the institution's policy (but not by Texas law) to report. Sanctions for failure to report are determined solely by the institution's policy. The Texas law requiring mandatory termination and criminal liability would not apply.*

# Employees Excepted: Category 2

## Employees Who are Victims

- Victims of sexual harassment, sexual assault, dating violence, or stalking are not mandatory reporters of/for their own incident.

# Employees Excepted: Category 3

## Employees Receiving Information at a Public Awareness Event - 1

- Employees are not required to report information about an incident that is disclosed at a public awareness event on sexual harassment, sexual assault, dating violence, or stalking.

# Employees Excepted: Category 3

## Employees Receiving Information at a Public Awareness Event - 2

*Example: The university's Women and Gender Resource Center hosted an event during Sexual Assault Awareness Month where victims of sexual violence shared their stories publicly from the stage. During the event, a student shares a poem that details a sexual assault the student experienced during their freshman year. An English professor heard this disclosure during the event. Is the professor required to report this to the Title IX Coordinator?*

***No, required reporters are not required to report disclosures made during public awareness events such as Take Back the Night or events hosted during Sexual Assault Awareness Month.***

# Employees Excepted: Category 4

## Confidential Employees (*limited disclosure*) - 1

- Employees whose institution designates them as **persons with whom students may speak** confidentially may be limited in the information they must report.
  - IF the information they receive was conveyed under circumstances rendering the communication confidential or privileged under other law.
- NOTE: Employees designated as confidential employees **MUST** fully report incidents observed or reported to them under circumstances outside the scope of a confidential communication without limitation.

# Employees Excepted: Category 4

## Confidential Employees (*limited disclosure*) - 2

*Example: Ifeoma is a counselor in the university's Student Counseling Center. Alvin, a student at the university and one of Ifeoma's clients, discloses to Ifeoma in a counseling session that he is concerned his roommate James is not doing well following a breakup with Alex, a romantic partner. He explains that James has been calling the former partner at all hours of the night, upwards of 50 times a day sometimes. James has also been standing outside Alex's residence hall to observe Alex's comings and goings, contacting Alex's friends and family through social media to beg them to get Alex to talk to him. Is Ifeoma required to report this information to the Title IX Coordinator? If so, what is she required to report?*

***Yes, Ifeoma is required to report to the Title IX Coordinator that she has become aware of alleged stalking. Ifeoma may not report any additional information.***



# Employees Excepted: Category 4

## Confidential Employees (*limited disclosure*) - 3

*Example: If in the last example, Alvin, instead of being a student client, is a coworker, is Ifeoma required to report this information to the Title IX Coordinator? If so, what is she required to report?*

*If the information is not received in a setting that renders it confidential, Ifeoma must report all information that Alvin has told her about James's alleged stalking behavior.*

# Confidentiality, Confidential Employees, and Student Advocates

# Caution on Confidentiality

- The new law **does not authorize** institutions to designate **confidential employees for non-students** who report sexual harassment, sexual assault, dating violence, or stalking.
- However, employees whose duties authorize them to receive and maintain confidential or privileged information may do so for students and non-students, if received under circumstances rendering the communication confidential or privileged under other law.
- e.g.
  - Licensed professional counselors
  - Healthcare providers
  - Clergy
  - Legal counsel

# Another Caution on Confidentiality for Employee Health or Medical Providers - 1

- **Information** regarding an incident of sexual harassment, sexual assault, dating violence, or stalking that is **disclosed to a healthcare provider or medical provider employed by the institution** is confidential and may only be shared by the provider with the victim's consent.
- As confidential employees, healthcare and medical providers must report each incident to the institution's Title IX Coordinator by type and must not include any information identifying the victim.

# Another Caution on Confidentiality for Employee Health or Medical Providers - 2

*Example: Teresita is a certified nurse practitioner in the university's Student Health and Wellness Center. Teresita sees a patient, Abby, who comes into the office for sexually transmitted disease and pregnancy testing. Abby discloses that she was sexually assaulted the previous night and wants to ensure that she has not contracted any sexually transmitted infections or become pregnant as a result of this sexual assault. She tells Teresita that she wants to report the assault to the police, but she is too overwhelmed to find the police contact information. May Teresita report this sexual assault to the police on Abby's behalf?*

*Yes, with Abby's consent, Teresita may contact the relevant police department. It is recommended that Teresita gain Abby's written consent for this. Teresita is also required to report to the Title IX Coordinator that there has been a sexual assault. Without Abby's consent, that is the only information that can be reported to the Title IX Coordinator.*

# Who else may maintain confidential information?

- The new law authorizes institutions to designate one or more students to serve as "Student Advocates."
  - Student Advocates must be enrolled as a student at the institution.

# Advocates under Other Law - 1

## “Advocates for Survivors of Sexual Assault”

- Survivor Advocates must be meet certification requirements set by the Office of the Texas Attorney General.
- Confidential communications must be made:
  - By a “survivor” of sexual assault or other “sex offense” as prescribed by law
  - In the course of receiving sexual assault advocacy services

# Advocate Confidentiality under Other Law - 2

## Texas Government Code – Victims of Sexual Assault

Victims of sexual assault have the right to confidential communication between a sexual assault advocate or a sexual assault program. A sexual assault advocate or a sexual assault program must be certified according to the minimum standards set forth by the Texas Attorney General.

- To find a list of sexual assault advocate programs in Texas, click here: <http://taasa.org/crisis-center-locator/>
- For sexual assault program minimum standards requirements for advocate training certification, click here: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/crime-victims/SATP-Certification-Guide.pdf>

## Texas Family Code – Victims of Dating/Family Violence

Victims of dating/family violence can seek supportive services from a family violence center with enhanced confidentiality. State law provides privilege for written and oral confidential communications exchanged between a victim of family violence and an advocate at a family violence center.

- To find a list of local family violence centers in Texas, click here: [http://tcfv.org/wp-content/uploads/2019/08/tcfv\\_srv\\_directory\\_2019.pdf](http://tcfv.org/wp-content/uploads/2019/08/tcfv_srv_directory_2019.pdf)



# Advocates under Other Law - 3

*Example: A student reports a sexual assault to a Student Advocate or Title IX Coordinator and wants to know if they should or can get a sexual assault exam.*

*The Student Advocate or Title IX Coordinator will refer the victim to a hospital or community-based program that has a sexual assault nurse examiner (SANE) on staff. Once they present to the hospital or community-based program as a victim of sexual assault, an advocate for a sexual assault survivors will arrive to assist them in receiving the necessary services.*

# What must confidential employees report?

- Employees designated or licensed to maintain confidentiality must report **only the type of incident** reported to them
  - They may not report information that would violate a student's expectation of privacy, **UNLESS**
  - The employee is required to report information under other law
  - The student consents to disclosure
- **NOTE:** Only a single report stating the type of incident is required when multiple confidential employees receive information about the same incident.

# What must Student Advocates report? - 1

- Student Advocates may not disclose any communication made by a student **UNLESS**
  - Disclosure is required by law
  - The student consents to disclosure

# What must Student Advocates report? - 2

*Example: The university designated Trent as a Student Advocate. After the university announced Trent as one of the Student Advocates, a fellow student stopped Trent after class to discuss a concern. Trent set up a time to meet with a student during his Student Advocate hours. The student reported to Trent that she was sexually assaulted by a non-affiliated person off campus over the weekend. Should Trent report this matter?*

*Trent can only disclose this matter to the Title IX Coordinator with the written consent of the student (victim/complainant). Student Advocates are confidential and can only disclose if a federal law requires them to do so.*

# Who is protected by confidentiality? - 1

- An alleged victim of sexual harassment, sexual assault, dating violence, or stalking
- A person who:
  - Reports an incident of sexual harassment, sexual assault, dating violence, or stalking
  - Seeks guidance or support concerning an incident from the institution
  - Participates in the investigation or adjudication of an incident
  - Is alleged to have committed or assisted in the commission of an incident of sexual harassment, sexual assault, dating violence, or stalking

# What is protected by confidentiality? - 2

- The **identity of the person** is confidential, unless waived in writing by the person.
- The identity
  - Is not subject to disclosure under the Texas Public Information Act
  - And **may only be disclosed to:**
    - The postsecondary institution **to conduct an investigation** of the report
    - Law enforcement **to conduct a criminal investigation** of the report, as appropriate
    - A healthcare provider **in an emergency** situation as determined by the institution
- **NOTE:** For cases in which an **investigation is deemed necessary**, *the identities of the parties and witnesses will be disclosed to the parties and witnesses*, as necessary.

# Victim Rights

# Victim Request Not to Investigate - 1

- A victim may request that the institution not investigate the reported incident.
- The institution may choose whether or not to honor the request not to investigate after considering:
  - Seriousness of the allegation
  - Existence of other reports
  - Risk of harm to others
  - Any other relevant factors



# Victim Request Not to Investigate - 2

- The institution must tell the victim the outcome of the decision regarding whether to investigate.
- If the institution decides to investigate, it must comply with the confidentiality requirements under applicable federal and state law.
- If the institution does not investigate, it must take the reasonable steps it determines are necessary, consistent with the law and institutional policy, to protect the health and safety of the community in relation to the alleged incident.

# Consequences for Failure to Report or False Reporting

# Employment Consequences - 1

**Mandatory Termination** – “A postsecondary educational institution shall terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedure to have committed an offense [of failure to report].”

# Employment Consequences - 2

## What is required of the institution?

- Conduct an investigation through the school's faculty/staff disciplinary process to determine whether the employee committed the offense of failure to report.
- If it is determined that the employee did in fact commit this offense, **termination is required.**

# Criminal Penalties

In addition, it is a:

- *Class B misdemeanor* (punishable by a maximum of 180 days in jail and/or a maximum fine of \$2,000) for a person who “is required to make a report under Section 51.252 and **knowingly fails** to make the report” or “with the intent to harm or deceive, knowingly makes a report . . . that is **false.**”
- The offense is escalated to a *Class A misdemeanor* (punishable by up to one year in jail and/or a maximum fine of \$4,000) “if it is shown on the trial of the offense that the actor intended to conceal the incident.”

# Retaliation

# Retaliation – Victims & Respondents - 1

A postsecondary educational institution shall take reasonable steps to ensure:

- Victims of sexual harassment, stalking, sexual assault, and/or dating violence receive interim measures that protect against retaliation
- The victim and respondent are protected from retaliation and harassment during the disciplinary process

# Retaliation – Victims & Respondents - 2

*Example: The day before the hearing in a stalking case, the Title IX Coordinator learned that friends of the victim sent the respondent harassing messages and followed the respondent around campus.*

*The Title IX Coordinator must act to stop the harassment of the respondent during the disciplinary process.*



# Retaliation – Witnesses & Reporters - 1

A postsecondary educational institution may not discipline or discriminate against an employee or student who in good faith:

- Reports an incident of sexual harassment, sexual assault, dating violence, or stalking
- Cooperates with the investigation, disciplinary process, or judicial proceeding related to the report

This provision does not include a person who perpetrated or assisted in the perpetration of an act of sexual harassment, stalking, dating violence, or sexual assault.

# Retaliation – Witnesses & Reporters - 2

A person acting in good faith who reports or cooperates in an investigation:

- Is immune from civil liability, and from criminal liability for offenses punishable by fine only, that might otherwise be incurred or imposed as a result of those actions

# Retaliation – Witnesses & Reporters - 3

*Example: An employee overheard a discussion between two coworkers. The employee reported the matter to the Title IX Coordinator believing the discussion constituted sexual harassment. After an investigation, the Title IX Coordinator determined that the incident did not constitute sexual harassment.*

*The employee reported the matter in good faith and should not be disciplined for making a report.*

# Remedies, Interim Measures, and Support Services for All Parties

# Remedies, Interim Measures, and Support Services for All Parties - Requirements

- In responding to reports, the institution **must**:
  - Provide interim and supportive measures to protect victims during the process
  - Implement measures to protect both parties from retaliation
  - Offer each party counseling by an individual who does not provide counseling to any other person involved in the incident, to the greatest extent practicable
  - Permit either party to drop a course in which **both parties** are enrolled without an academic penalty
- The institution may also provide interim measures and other support services to the accused party, witnesses, and other participants, consistent with its policy.
- Title IX and the Clery Act impose additional requirements.

# Administrative Reporting Requirements

# Overview

## **Reporting Requirements in the Tex. Edu. Code § 51.253**

1. Title IX Coordinator (TIXC) Report Requirement
2. Imminent Danger Reporting Requirement
3. Chief Executive Officer (CEO) Report Requirement
  - CEO reporting exceptions

## **Additional clarifications and guidance for institutions?**

- Texas Higher Education Coordinating Board (THECB) “recommended templates” (Report Templates) in the Training Appendix
- Supplemental training on the Report Templates in the Training Appendix
- Supplemental reference on Title IX Coordinator Sexual Misconduct Policy Checklist in the Training Appendix



# Administrative Reporting Requirements

## Who does this apply to?

**“Postsecondary educational institutions,”** which means an institution of higher education or a private or independent institution of higher education:

- **“Institution of higher education”** means any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education, including **Systems** of higher education.
- **“Private or independent institution of higher education”** includes private or independent colleges or universities.





# 1. Title IX Coordinator Report

# Title IX Coordinator Report: Introduction

- The institution's Title IX Coordinator (TIXC) is responsible for submitting a written report to the institution's Chief Executive Officer (e.g., President of the institution) at least once every three months; effective January 1, 2020.
- The THECB will make available a "recommended template" to the institutions for the **Title IX Coordinator Report**, which will satisfy the reporting requirements of this section for the THECB.
- Using the report template is not required.



# Required Information in the TIXC Report

1. Information on the **investigation of the reports received by employees** (as required in Sect. 3.5) on “sexual harassment,” “sexual assault,” “dating violence,” or “stalking” (as defined in Sect. 3.3);
2. Information on the **disposition** (if any) of any **disciplinary processes** arising from those reports; and
3. Information on the **reports** for which the institution determined **not to initiate a disciplinary process** (if any).



# TIXC Report: Clarifications

- **“Disposition”** (for the purposes of this section) means the final result under the institution’s disciplinary process.
- When identifiable, reports may exclude duplicate reports of a single alleged incident.
- Reports may separately specify the number of confidential reports received by confidential employees, who are only required to report “type of incident” to the TIXC or Deputy TIXC.

## 2. Imminent Danger Reporting

# Imminent Danger Reporting: Introduction

- The institution's Title IX Coordinator (TIXC) or Deputy TIXC is responsible for immediately reporting to the institution's Chief Executive Officer (e.g., President of the institution) an incident reported by an employee, if the TIXC has cause to believe that the safety of any person is in imminent danger as a result of the incident.
- This reporting requirement of the TIXC or Deputy TIXC is effective January 1, 2020.

# Imminent Danger: Reporting Guidance

- Institutions may consider establishing the criteria for determining a cause to believe that the **safety of any person is in imminent danger** as a result of the incident.
- Institutions can determine the process and procedures for **how** the TIXC or Deputy TIXC will report to the CEO of imminent danger notifications, and the **type of information** that will be included in the notifications.
- Once determined by the institution, the institution should consider documenting the notification process with the TIXC and keeping written records of the imminent danger notifications for the TIXC record keeping purposes.



# 3. Chief Executive Officer (CEO) Report



# CEO Report: Introduction

- The institution's Chief Executive Officer (CEO) is responsible for:
  1. Submitting a summary report (CEO Report) to the institution's governing body (e.g., Board of Regents, Board of Trustees) at least once annually, during either the fall or spring semester; and
  2. Posting the summary report (CEO Report) on the institution's website at least once annually, during either the fall or spring semester; both effective January 1, 2020.
- The THECB will make available a "recommended template" to the institutions for the **CEO Report**, which will satisfy the reporting requirements of this section for the THECB.
- Using the report template is not required.

# CEO Report: Exception

- If for any semester an institution has fewer than 1,500 enrolled students, the CEO must submit and post a summary report for that semester only if more than five (5) reports were received.
- **If an institution meets this exception criteria in a semester:** The institution should still consider communicating to the institution's governing body that the exception criteria was met and posting on the institution's website that the exception criteria was met, and therefore, explained publicly on the institution's website.



# Required Information in the CEO Report

1. The **number of reports received by employees** on “sexual harassment,” “sexual assault,” “dating violence,” or “stalking”;
2. The **number of investigations** conducted as a result of those reports;
3. The **disposition** (if any) of any **disciplinary processes** arising from those reports;
4. The **number of those reports** for which the institution determined **not to initiate a disciplinary process** (if any);
5. Any **disciplinary actions taken**.  
*\*The CEO Report may not identify any person (associated with the reports received by an employee)*



# CEO Report: Clarifications

- **“Disposition”** (for the purposes of this section) means the final result under the institution’s disciplinary process.
- When identifiable, reports may exclude duplicate reports of a single alleged incident.
- Reports may separately specify the number of confidential reports received by employees, who are only required to report “type of incident” to the TIXC or Deputy TIXC.

# Posting the CEO's Summary Report (CEO Report) on the Institution's Website

- The CEO Report Template is written purposefully so that an institution could publish the summary report (CEO Report) in its entirety on an annual basis, including the memo introduction, the summary data report, and the included footnotes in the CEO Report to ensure the full context of the summary data is explained publicly on the institution's website.
- The CEO must post the summary report (CEO Report) on the institution's website at least once annually, during either the fall or spring semester by **October** of each year, in order to certify in writing that the institution is in substantial compliance.

# Posting the Exception on the Institution's Website

## As stated previously:

- If for any semester an institution has fewer than 1,500 enrolled students, the CEO shall submit and post a summary report for that semester only if more than five (5) reports were received.
- **If an institution meets this exception criteria in a semester:** The institution should still consider communicating to the institution's governing body that the exception criteria was met and posting on the institution's website that the exception criteria was met, and therefore, explain publicly on the institution's website.



# CEO Certification to the THECB

## **As referenced in the rules for Compliance:**

The institution's Chief Executive Officer (CEO) must annually certify in writing to the Texas Higher Education Coordinating Board (THECB), in **October** of each year, that the institution is in substantial compliance with the statute.

# CEO Certification to the THECB (continued)

## **In order for the institution's CEO to certify substantial compliance:**

1. The CEO must have already submitted a summary report (CEO Report) to the institution's governing body (e.g., Board of Regents, Board of Trustees) at least once annually, during either the fall or spring semester; and
2. The CEO must have already posted the summary report (CEO Report) on the institution's website at least once annually, during either the fall or spring semester.



# Questions or clarifications needed on the Administrative Reporting Requirements?

## Contact the THECB:

- Cathie A. Maeyaert, J.D.
- Director for Private Postsecondary Institutions
- Title IX Coordinator for Higher Education Institutions
- Direct Phone: (512) 427-6527
- Email: [cathie.maeyaert@highered.texas.gov](mailto:cathie.maeyaert@highered.texas.gov)

# Disciplinary Process

# Student Rights During the Disciplinary Process

Both the student alleged to have violated the policy and the alleged victim must be afforded the following rights throughout the disciplinary process:

## Number One

- A *prompt* and *equitable* opportunity to present witnesses and other evidence relevant to the alleged violation during the process

## Number Two

- Equitable access to all evidence relevant to the alleged violation in the institution's possession

## Number Three

- Protection from retaliation and harassment as deemed reasonable during the pending disciplinary process

# Withdrawal or Graduation

# Respondent Withdrawal or Graduation

If a student withdraws or graduates from a postsecondary educational institution pending a disciplinary charge alleging that the student violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking, the institution:

- (1) May not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility; and
- (2) Shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

# Other Institutional Duties

# Sharing Information with Other Institutions

On request by another postsecondary educational institution, a postsecondary educational institution **shall provide** to the requesting institution information relating to a determination by the institution that a student enrolled at the institution violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking – as permitted by state or federal law.

# Trauma Informed Investigation Training

Each peace officer employed by a postsecondary educational institution shall complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.



# Memoranda of Understanding

All postsecondary educational institutions shall enter into a memorandum of understanding with one or more:

- (1) local law enforcement agencies;
- (2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; or
- (3) hospitals or other medical resource providers.



# Annual Certification

The Chief Executive Officer must certify in writing to the THECB, **each October**, as follows:

- That the institution is in substantial compliance with Texas Education Code Subchapter E-2 (Sections 51.251-51.259)
  - **Reminder:** *Substantial Compliance* means a postsecondary educational institution has made a good faith effort to comply with the requirements under these rules provided that the deficiencies identified by the THECB can be readily corrected.

The Chief Executive Officer Annual Certification to THECB template posted on the THECB website **must** be used for this certification.

# Non-Compliance

If the THECB finds that an institution is not in substantial compliance with Texas Education Code (Subchapters E-2 on or after January 1, 2020, and E-3 on or after August 1, 2020):

- The THECB may assess an administrative penalty against the institution in an amount not to exceed **\$2 million**.
  - **Note:** If such a finding is made, the THECB shall consider the nature of the violation and the number of students enrolled at the institution in determining the amount of the penalty.
- The THECB will provide State Officials with a report that identifies institutions found not to be in substantial compliance and summarizes any penalties assessed during the calendar year preceding the date of the report.

# Administrative Penalty Assessment

If the THECB assesses an administrative penalty against an institution, the following will occur:

- The THECB will provide the institution with written **notice** of the THECB's reasons for assessing the penalty; and
- The institution may **appeal** the penalty.
  - **Note:** An institution cannot pay the administrative penalty using *state or federal money*.
- The THECB will deposit any administrative penalty collected to the credit of a sexual assault program fund.