

# SEXUAL MISCONDUCT

## Title IX Prohibits Discrimination on the Basis of Sex

South Texas College (hereinafter the "College") does not discriminate or tolerate discrimination against any employee, applicant for employment, student, or applicant for admission on the basis of sex in the education program or activity that it operates, and it is prohibited by Title IX and its implementing regulations from discriminating in such a manner. This non-discrimination requirement in its education program or activity extends to student recruitment and admission and to employment of personnel. Any inquiries from students (including parents, guardians, or conservators of minor students), employees, or the general public about the application of Title IX and its implementing regulations to the College may be referred to the College's Title IX Coordinator or Deputy Title IX Coordinator, to the Assistant Secretary of the U.S. Department of Education, or to both. A violation of this policy by any person is subject to disciplinary action up to and including expulsion from the College or termination from employment.

### A. Sex Discrimination

Under Title IX, sex discrimination involves exclusion from or different treatment on the basis of sex in such College activities as recruitment, admission, financial aid, work-study, athletics, counseling, or employment. Sex discrimination may also take the form of sexual harassment which can encompass sexual assault, dating violence, domestic violence, or stalking. South Texas College is committed to eradicating all forms of sex-based discrimination including sexual harassment and prohibits its employees and students from engaging in such conduct. Sexual Harassment can occur in any sex or gender configuration without regard to gender identity, gender expression or sexual orientation and may include off-campus or online conduct. Any person who violates this policy is subject to disciplinary action up to and including expulsion from the College or termination from employment.

### B. Sexual Harassment

Under Title IX, sexual harassment (hereinafter "Sexual Harassment") is considered a form of sex-based discrimination. The Title IX implementing regulations define sexual harassment as conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo harassment. This occurs when an employee of the College conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct. This is conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

## Sexual Harassment and other Prohibited Behavior under Chapter 51

Subchapters E-2 and E-3 of Chapter 51, Texas Education Code (hereinafter "Chapter 51") require that the College adopt a policy prohibiting sexual harassment, sexual assault, dating violence, and stalking that is applicable to each student enrolled at and each employee of the College.

### A. Sexual Harassment Chapter 51 defines sexual harassment, as follows:

1. 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.

### B. Other Prohibited Behavior under Chapter 51 Chapter 51 also prohibits the following behavior (hereinafter "Prohibited Behavior"):

1. Sexual Assault - means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
2. Dating Violence - means physical violence or verbal abuse committed by a person.
  - a. against a victim with whom the person is or has been in a social relationship of a romantic or intimate nature;
  - b. is intended to result in physical harm, bodily injury, assault, mental anguish, mental pain, emotional distress, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault; and
  - c. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i. The length of the relationship.
    - ii. The type of relationship.
    - iii. The frequency of interaction between the persons involved in the relationship.
3. Stalking - means engaging in any act or course of conduct that is directed at a specific person that would cause a reasonable person to:
  - a. fear for his or her safety or the safety of others; or
  - b. suffer substantial emotional distress.

## Sexual Violence and Consent, Coercion and Incapacitation

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

## Consent

Consent is knowing, voluntary, and clear permission, by word or action, to engage in mutually agreed upon sexual activity. It is the responsibility of each party to make certain that the other has consented before engaging in the activity. Consent can be withdrawn once given,

as long as the withdrawal is reasonably and clearly communicated and the activity should cease immediately or within a reasonable time. Resistance to engaging in sexual activity is a clear demonstration of non-consent as is knowing that the other person is incapacitated and unable to provide consent.

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

### **Incapacitation**

Incapacitation means a mental state where a person lacks the capacity to give knowing/informed consent. Incapacitation may be due to a person's use of drugs or alcohol; due to an intellectual, mental or physical disability; due to a person's lack of consciousness, or due to a person being underage. A person who is under seventeen (17) years of age is legally incapable of consenting to sexual activity. A person who engages in sexual activity with someone whom the individual knows, or reasonably should know, is incapable of knowingly consenting to the sexual activity violates this policy. Intoxication of the individual alleged to have violated this policy is not a defense.

### **Consensual Romantic or Sexual Relationships Prohibited**

The College prohibits employees from entering consensual romantic or sexual relationships with each other if one is the direct or indirect supervisor of the other. The College prohibits faculty members and students from entering consensual romantic or sexual relationships with each other if one is the instructor of the other.

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

Individuals in an instructor-student relationship are prohibited from explicitly or implicitly suggesting or recommending or agreeing that the student enrolled in the faculty member's class drop the class or withdraw from enrollment in the College or that the faculty member withdraw from the class or from employment with the College with the intention of circumventing this policy.

The prohibition on consensual relationships shall apply for the duration of the supervisor subordinate or instructor-student relationship and for a period of one calendar year after such relationship has ended.

### **Designation of Title IX Coordinator**

The following employee serves as the Title IX Coordinator.

Todd C. Nelson  
Contracts and Regulatory Resources Officer  
Title IX Coordinator  
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The Title IX Coordinator has the primary responsibility for coordinating College's efforts

related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this policy. The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees the grievance process and all resolutions of complaints under this policy and these procedures.

### **Mandatory Reporting of Sexual Harassment or of Prohibited Behavior**

All employees of South Texas College, unless designated a Confidential Employee, are considered Mandatory Reporters under Title IX and Chapter 51. Mandatory Reporters who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the College at the time of the incident shall promptly report the incident to the Title IX Coordinator or Deputy Title IX Coordinator. The report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident for all actual or suspected instances of sexual harassment. The Mandatory Reporter must promptly share with a Title IX Coordinator or Deputy Title IX Coordinator all known details of a report made to the Mandatory Reporter in the course of their employment. Mandatory Reporters are required to report an incident regardless of the when or where the incident occurred.

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

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

Online reports can be made at: <https://www.southtexascollege.edu/report/>