

# Sexual Misconduct

**Original Implementation:** July 27, 2015

**Last Revision:** July 24, 2018

## 1. General Policy Statement

Stephen F. Austin State University (university) is committed to maintaining a learning and working environment that is free from sex discrimination. Sexual Misconduct is a form of sex discrimination and will not be tolerated. Individuals who engage in Sexual Misconduct will be subject to disciplinary action.

1.1 The university will take prompt disciplinary action against any individuals or organizations within its control who violate this policy. The university encourages any student, faculty, staff, or visitor to promptly report violations of this policy to an individual identified in Section 4.7.

## 2. Applicability

This policy applies to all university administrators, faculty, staff, students, and third parties within the university's control, including visitors and applicants for employment. It applies to conduct regardless of where it occurs, including off university property, if it potentially affects the Complainant's education or employment with the university. It also applies regardless of the gender, gender identity or sexual orientation of the Complainant or the Respondent. In addition, it applies whether the reported policy violation was made by or against a third party, and whether the reported policy violation was made verbally or in writing.

## 3. Definitions and Examples<sup>1</sup>

**Complainant** – refers to the individual(s) who are alleged to have been impacted by a violation of this policy.

**Respondent** – refers to the individual(s) who is accused of violating this policy.

**Reporting Party**—refers to the individual(s) who submitted/made the report alleging a violation of this policy. The Reporting Party and Complainant may or may not be the same person, for example reports submitted by anyone designated as a Responsible Employee under this policy.

**Consent** – involves a voluntary, ongoing, mutual understanding among all participants that indicates a willingness through words or clear unambiguous actions that demonstrate a

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<sup>1</sup> The definitions provided in the main body of the text are the definitions adopted by the university. When applicable, we have included the state law definition. In any criminal action brought by law enforcement, the state law definition will apply.

knowing, intentional agreement to engage in each instance of sexual activity. Knowledge of Consent is the responsibility of each person involved in every instance of sexual activity and Consent can be withdrawn at any time.

### Examples of Ineffective or Absence of Consent

The following list provides examples of when Consent has not been obtained or is not effective. This list is not exhaustive:

Consent is not effective when any participant in the sexual activity is unsure if a knowing, intentional, voluntary agreement to engage in each act of sexual activity has been demonstrated.

Consent is not effective if one person knew or reasonably should have known that another person involved was incapacitated.

Consent to one act does not imply Consent to another; past Consent does not imply future Consent.

Consent to engage in sexual activity with one person does not imply Consent to engage in sexual activity with another.

Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of Consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) Coercion, (e) Incapacitation or (f) any other factor that would eliminate an individual's ability to exercise their own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute Consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly demonstrates a willingness to engage in each instance of sexual activity.

The definition of Consent for the crime of Sexual Assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.<sup>2</sup>

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<sup>2</sup> Texas Penal Code, Section 22.011(b) states that a Sexual Assault is without Consent if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; (3) the other person has not Consented and the actor knows the other person is unconscious or physically unable to resist; (4) the actor knows that as a result of mental disease or defect the other person is at the time of the Sexual Assault incapable either of appraising the nature of the act or of resisting it; (5) the other person has not Consented and the actor knows the other person is unaware that the Sexual Assault is occurring; (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; (7) the actor compels the other person

**Incapacitation** – A state of being that prevents an individual from having the capacity to give Consent. Incapacitation could result from the use of drugs or alcohol, a person being asleep or unconscious, or because of an intellectual or other disability or medical condition.

Alcohol and drugs can impair judgment and decision-making capacity, including the ability to rationally consider the consequences of one's actions. The effects of alcohol and drug consumption often occur along a continuum. For example, inhibition to euphoria and memory impairment, and to disorientation and incapacitation. Incapacitation due to alcohol or drug use is a state beyond "mere" intoxication or even being drunk. Indicators of incapacitation may include inability to communicate, lack of control over physical movements, and/or lack of awareness of circumstances. An incapacitated person can also experience a blackout state during which they appear to give consent but do not have conscious awareness or the capacity to consent.

**Intimidation** – Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the person to actual physical attack.

**Coercion** - the practice of compelling another party to act by use of intimidation or threats.

**Dating Violence**<sup>3</sup> – includes abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature. The existence of such a relationship shall be determined by the individual subjected to the violence with consideration of the following factors:

- a) The length of the relationship;
- b) The type of relationship; and
- c) The frequency of interaction between the persons involved in the relationship.

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to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat.

<sup>3</sup> Dating Violence is defined by the Texas Family Code, Section 71.0021 as:

- (a) an act, other than a defensive measure to protect oneself, by an actor that:
  - (1) is committed against a victim:
    - (A) with whom the actor has or has had a dating relationship; or
    - (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
  - (2) is intended to result in physical harm, bodily injury, assault, 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.
- (b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:
  - (1) the length of the relationship;
  - (2) the nature of the relationship; and
  - (3) the frequency and type of interaction between the persons involved in the relationship.
- (c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

Texas Penal Code, Section 22.01 provides the criminal penalties associated with Dating Violence.

Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of domestic violence.

**Domestic (Family) Violence**<sup>4</sup> – includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the individual subjected to the violence, by a person with whom the individual subjected to the violence shares a child in common, by a person who is cohabitating with or has cohabitated with the individual subjected to the violence as a spouse or intimate partner, by a person similarly situated to a spouse of the individual subjected to the violence under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth subjected to the violence who is protected from that person’s acts under the domestic or family violence laws of the state of Texas.

**Hostile Environment** – exists when sex-based harassment is sufficiently severe or pervasive to deny or limit the individual’s ability to participate in or benefit from the university’s programs or activities or an employee’s terms and conditions of employment. A Hostile Environment can be created by anyone involved in a university’s program or activity (e.g., administrators, faculty members, employees, students, and university visitors).

In determining whether sex-based harassment has created a Hostile Environment, the university considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not adequate, that the conduct was unwelcome to the individual who was harassed. To conclude that conduct created or contributed to a Hostile Environment, the university must also find that a reasonable person in the individual’s position would have perceived the conduct as undesirable or offensive.

To ultimately determine whether a Hostile Environment exists for an individual or individuals, the university considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of the persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected an individual’s education or employment.

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a Hostile Environment. Indeed, a single instance of Sexual Assault may

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<sup>4</sup> Family Violence is defined by the Texas Family Code Section 71.004 as:

- (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or Sexual Assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or Sexual Assault, but does not include defensive measures to protect oneself;
- (2) abuse, as that term is defined by Sections [261.001](#)(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or
- (3) Dating Violence, as that term is defined by Section [71.0021](#).

Texas Penal Code Section 22.01 provides the criminal penalties associated with Domestic (Family) Violence.

be sufficient to create a Hostile Environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

First Amendment Considerations: This policy does not impair the exercise of rights protected under the First Amendment.

**Other Inappropriate Sexual Conduct** – Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of Sexual Harassment but is unprofessional, inappropriate for the workplace or classroom and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace or classroom.

**Preponderance of the Evidence** – The greater weight of the credible evidence. Preponderance of the Evidence is the standard for determining allegations of Sexual Misconduct under this policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

**Responsible Employee** –A university employee who has the duty to report incidents of Sexual Misconduct to the Title IX coordinator or other appropriate designee, or an employee whom an individual could reasonably believe has this duty. Responsible Employees include all administrators, faculty, supervisory staff, residence life directors and advisors, and graduate teaching assistants. Any employee with confidentiality obligations related to their primary duties to the university as defined in Section 4.5 is excepted.

**Retaliation** – Any adverse action threatened or taken against someone because the individual has filed, supported, or provided information in connection with a report of Sexual Misconduct. Retaliation includes, but is not limited to: intimidation, threats, or harassment against any Complainant, Reporting Party, Respondent, witness, or third party involved with the report, investigation, or disposition of a policy violation. This includes any action made directly by an individual or indirectly through coordination with a third party, by any means including but not limited to: verbal threats in person, by phone, email, text, social media; adverse impact on employment or grading decisions; interference with access to services or resources; or behavior or contact, including a pattern of behavior or contact, with a person that could influence the outcome of an investigation by preventing a fair, reliable, impartial, or proper investigation.

**Sexual Assault**<sup>5</sup> – Refers to any sexual contact or intercourse with a person without the person’s Consent, including sexual contact or intercourse against the person’s will or in a

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<sup>5</sup> Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:

- a) Causing the penetration of the anus or sexual organ of another person by any means, without that person’s Consent; or

circumstance in which the person is incapable of Consenting to the contact or intercourse and includes but is not limited to any offense that meets the definition of Rape, Fondling, Incest, or statutory Rape:

- a) *Rape*: 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 person.
- b) *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification without the Consent of the person, including instances where an individual is incapable of giving Consent because of the person's age or because of a temporary or permanent mental incapacity.
- c) *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d) *Statutory Rape*: Sexual intercourse with a person who is under the statutory age of Consent.

**Sexual Exploitation** – Occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own benefit, or to benefit anyone other than the one being exploited. Examples of Sexual Exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-Consenting students/groups; and any activity that goes beyond the boundaries of Consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted infection (STI) to another.

**Sexual Harassment** – Unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when submission to such conduct is made either explicitly or implicitly a term or condition of a person's student status, employment, or participation in university activities; such conduct is sufficiently severe or pervasive that it interferes with an individual's education, employment, or participation in university activities, or creates an objectively Hostile Environment; or such conduct is intentionally directed towards a specific individual and has the effect of unreasonably interfering with that individual's education, employment, or participation in university activities, or creating an intimidating, hostile, or offensive environment. Sexual Harassment is a form of sex discrimination that includes:

- a) Sexual Violence, Sexual Assault, Stalking, domestic violence and Dating Violence as defined herein.
- b) Physical conduct, depending on the totality of the circumstances present, including frequency and severity, including but not limited to:
  - i. unwelcome intentional touching; or

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- b) Causing the penetration of the mouth of another person by the sexual organ of the actor, without that person's Consent; or
  - c) Causing the sexual organ of another person, without that person's Consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.

- ii. deliberate physical interference with or restriction of movement.
- c) Verbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:
  - i. explicit or implicit propositions to engage in sexual activity;
  - ii. gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
  - iii. gratuitous remarks about sexual activities or speculation about sexual experiences;
  - iv. persistent, unwanted sexual or romantic attention;
  - v. subtle or overt pressure for sexual favors;
  - vi. exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars, or other materials; or
  - vii. deliberate, repeated humiliation or intimidation based upon sex.

**Sexual Misconduct** – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes Sexual Assault, Sexual Exploitation, sexual intimidation, Sexual Harassment, domestic violence, Dating Violence, Stalking, and Other Inappropriate Sexual Conduct. Sexual Misconduct can be committed by men or women, strangers or acquaintances, and can occur between or among people of the same or opposite sex.

**Sexual Violence** – Physical sexual acts perpetrated against a person’s will or where a person is incapable of giving Consent. The term includes, but is not limited to, Rape, Sexual Assault, sexual battery, sexual Coercion, sexual abuse, indecency with a child, and/or aggravated Sexual Assault.

**Stalking**<sup>6</sup> – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition--

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<sup>6</sup> Stalking as defined by Texas Penal Code, Section 42.072 is when an individual on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

- a) is considered harassment, or that the actor knows or reasonably should know the other person will regard as threatening:
  - i. bodily injury or death for the other person;
  - ii. bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or
  - iii. that an offense will be committed against the other person's property;
- b) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
- c) would cause a reasonable person to:
  - i. fear bodily injury or death for himself or herself;
  - ii. fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;
  - iii. fear that an offense will be committed against the person's property; or
  - iv. feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

- 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 person subjected to the Stalking behavior.
- c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

#### **4. Reporting Violations**

##### **4.1 All Members of the University Community, Third Party, and Anonymously Reported Policy Violations.**

All administrators, faculty, staff, students, and third parties are strongly encouraged to immediately report any incidents of Sexual Misconduct and Other Inappropriate Sexual Conduct to the Title IX coordinator or one of the deputy coordinators. Reporting options and online reporting forms can be found at the following website: [www.sfasu.edu/lumberjacks-care](http://www.sfasu.edu/lumberjacks-care). In addition, a link to reporting information will be maintained on the university home page.

##### **a. Anonymity**

Individuals wishing to remain anonymous may report a suspected policy violation by completing the online "[Sexual Misconduct Reporting Form](#)" without providing any personal identification, or by telephone or written communication with the Title IX coordinator or a deputy coordinator. Electing to remain anonymous may significantly limit the university's ability to stop the harassment, collect evidence, or take effective action against individuals or organizations accused of violating the policy. Retaliation against a person making a report or participating in an investigation is prohibited as outlined in Section 9.1 of this policy.

##### **b. Confidentiality**

The university has an obligation to maintain an environment free of sex discrimination, thus many university employees have mandatory reporting and response obligations and may not be able to honor a Complainant's or Reporting Party's request for confidentiality. Complainants and Reporting Parties who want to discuss an alleged policy violation in strict confidence may use the resources outlined in Section 4.5.

##### **c. Timeliness of Report**

Reports of policy violations should be made as soon as possible after the Complainant or Reporting Party becomes aware of the inappropriate conduct. Delays in reporting can greatly limit the university's ability to stop the



harassment, collect evidence, and/or take effective action against individuals or organizations accused of violating the policy.

#### 4.2 Responsible Employees

Incidents of Sexual Misconduct may also be reported to Responsible Employees. A Responsible Employee is a university employee who has the duty to report incidents of Sexual Misconduct to the Title IX coordinator or other appropriate designee, or an employee whom an individual could reasonably believe has this duty. Responsible Employees include all administrators, faculty, supervisory staff, residence life directors and advisors, and graduate teaching assistants. Any employee with confidentiality obligations as defined in Section 4.5 is excepted.<sup>7</sup> Responsible Employees should report incidents of Sexual Misconduct to the Title IX coordinator as soon as possible using the [Responsible Employee - Title IX Reporting Form](#). Responsible Employees can find contact information for the Title IX coordinator and deputy coordinators at the following website: [www.sfasu.edu/lumberjacks-care](http://www.sfasu.edu/lumberjacks-care).

#### 4.3 Reporting to Law Enforcement

Reports of Sexual Misconduct may also be made to the Stephen F. Austin State University Police Department at 936-468-2608 (non-emergency) or 911 (emergency) or to the City of Nacogdoches Police Department 936-559-2607 (non-emergency) or 911 (emergency) or to other local law enforcement authorities. The Title IX Coordinator and deputy coordinators can assist individuals in contacting these law enforcement agencies. Employees and students with protective or restraining orders relevant to a report are encouraged to provide a copy to the University Police Department. Individuals are strongly encouraged to report all criminal violations to law enforcement.

If a report of Sexual Misconduct is made to the University Police Department, it will advise the Complainant or Reporting Party of their right to file a report under this policy. To the extent allowed by law and university policy, the University Police Department shall also notify the Title IX coordinator of the report, and provide the Title IX coordinator or the individual investigating the reported policy violation access to any related university law enforcement records, so long as doing so does not compromise any criminal investigation.

#### 4.4 Reporting to Outside Entities

An individual wishing to make a report may also contact the U.S. Department of Education, Office for Civil Rights (OCR) to complain of sex discrimination or Sexual Misconduct including Sexual Violence:

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<sup>7</sup> For example, a student may make a report to an employee in the Office of the Dean of Student Affairs, a faculty member, or residence life staff. Each of these individuals is considered a Responsible Employee and accordingly each is obligated to report to the Title IX coordinator or other appropriate designee.

Office for Civil Rights  
U.S. Department of Education  
1999 Bryan St., Suite 1620  
Dallas, TX 75201  
Phone: (214) 661-9600  
FAX: (214) 661-9587

Employees may also contact the U.S. Equal Employment Opportunity Commission or Texas Workforce Commission Civil Rights Division to complain of sex discrimination or Sexual Harassment:

U.S. Equal Employment Opportunity Commission  
Houston District Office  
1919 Smith St., 6<sup>th</sup> Floor  
Houston, TX 77002  
Phone: (800) 669-4000  
FAX: (713) 651-4987

Texas Workforce Commission  
Civil Rights Division  
101 E 15<sup>th</sup> St., Rm 144-T  
Austin, TX 78778  
Phone: (888) 452-4778

#### 4.5 Confidential Support and Resources

Physical and mental health care professionals (including those who act in that role under the supervision of these individuals), are prohibited by confidentiality laws from reporting any information about an incident to anyone in any way that identifies the Complainant or Reporting Party, without the Complainant's or Reporting Party's permission. University employees who learn of a reportable violation while providing confidential services outlined above are not required to report identifying information to the Title IX coordinator, but are required to submit non-personally identifiable reports so that statistical reports can be accurately produced. Thus, students may discuss an incident with a counselor or counseling trainee in the SFA Counseling Center or SFA Counseling Clinic, School Psychology Assessment Center, or a health care provider in the Student Health Clinic. In addition, the university has designated the Project Coordinator for the U.S. Department of Justice Office on Violence Against Women (DOJ OVW) as a confidential reporting source. Any person can report a violation of this policy to any of these confidential reporting sources without concern that personally identifiable information related to the incident will be reported to the Title IX coordinator. Employees may seek assistance from the SFA Counseling Clinic, their own personal health care provider, or an off-campus resource without concern that the incident will be reported to the Title IX coordinator. More

information about university and community resources that provide such confidential services can be found on the following website: [www.sfasu.edu/lumberjacks-care](http://www.sfasu.edu/lumberjacks-care).

#### 4.6 Amnesty

In an effort to encourage reporting of Sexual Misconduct, the university will grant amnesty from disciplinary action to a person who voluntarily initiates a report of Sexual Misconduct, assists a Complainant, or cooperates with the investigation, if that person acts in good faith in reporting a policy violation or participating in an investigation. This amnesty does not extend to the person's own violations of this policy.

#### 4.7 Title IX Coordinator and Deputy Coordinators

These are the SFA officials with responsibility for coordinating the university's efforts to comply with and carry out its responsibilities under Title IX and its implementing regulations, including the investigation of reported Title IX violations.

Contact information for the Title IX Coordinator and Deputy Coordinators is outlined below. This information is subject to change. The most updated contact information for the Title IX coordinator and deputy coordinators can be found at [www.sfasu.edu/lumberjacks-care](http://www.sfasu.edu/lumberjacks-care).

The SFA Title IX coordinator is the Assistant Dean of Student Affairs for Support Services

Rusk Building, Room 301 | [titleIX@sfasu.edu](mailto:titleIX@sfasu.edu) | (936) 468-8292

Deputy Title IX coordinator for Students is the Assistant Dean of Student Affairs for Programming

Baker Pattillo Student Center, Suite 3.302 | [titleIXstudents@sfasu.edu](mailto:titleIXstudents@sfasu.edu) | (936) 468-7249

Deputy Title IX coordinator for Faculty, Staff, and Third Parties is the Director of Human Resources

Austin Building, Suite 201 | [titleIXemployees@sfasu.edu](mailto:titleIXemployees@sfasu.edu) | (936) 468-2304

Deputy Title IX coordinator for Athletics is the Senior Woman Administrator, SFA Intercollegiate Athletics

SFA Athletic Fieldhouse | [titleIXathletics@sfasu.edu](mailto:titleIXathletics@sfasu.edu) | (936) 468-3751

Deputy Title IX coordinator for the SFA Charter School is the CEO/Principal

SFA Charter School | 2428 Raguet Street | [titleIXcharter@sfasu.edu](mailto:titleIXcharter@sfasu.edu) | (936) 468-5899

## 5. Parties' Rights Regarding Confidentiality and Privacy

The university has great respect for the confidentiality and privacy of the parties in a reported policy violation. Under federal law, however, Responsible Employees who receive a report of Sexual Misconduct must share that information with the Title IX coordinator and/or a deputy coordinator. Those individuals may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the Complainant's or Reporting Party's request for confidentiality.

All university employees who are directly involved in the university's response to allegations of sexual misconduct outlined in this policy including investigators, members of appellate committees, sanctioning authorities, and administrative personnel, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report. Such a review is essential to protecting the safety of the Complainant, the Respondent, any other individuals involved in the process, and the broader campus community and to maintaining an environment free from sex discrimination and gender-based harassment.

Privacy and confidentiality have distinct meanings under this policy.

### **Privacy**

Privacy generally means that information related to a report of misconduct will only be shared with a limited group of individuals. The use of the information is limited to those university employees who "need to know" in order to assist in the active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet, and respect and safeguard the privacy of all individuals involved in the process as much as possible to ensure a fair, reliable, impartial, and proper investigation is completed.

### **Confidentiality**

Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include mental health providers, such as psychologists, counselors, and therapists; healthcare providers, such as doctors and nurses; ordained clergy; and sexual assault advocates, while working in their professional capacity where this privilege is attached. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others or as otherwise required by law.

In the course of the investigation, the university may share information only as necessary with people who need to know to fulfill the purposes of this policy and applicable law, such as investigators, witnesses, and the Respondent. The university will take all reasonable steps to ensure there is no Retaliation against a Complainant, Reporting Party, Respondent, witness, or third party. The university will comply with the Family Educational Rights and

Privacy Act (FERPA), with Texas Education Code Sec. 51.971, as applicable, and other confidentiality laws as they apply to Title IX investigations. To the extent possible, the university will also protect the privacy of all parties involved in a report of Sexual Misconduct.

## **6. Resources**

### **6.1 Immediate Assistance**

SFA Counseling Center  
(936) 468-2401    counseling@sfasu.edu

SFA Student Health Clinic  
(936) 468-4008    healthservices@sfasu.edu

SFA University Police  
(936) 468-2608    updemail@sfasu.edu

Family Crisis Center of East Texas – Campus Office  
(936) 468-7233  
(800) 828-7233 (24 hour crisis line)

#### **A. Healthcare**

An individual who experiences any form of sexual, domestic, or Dating Violence is encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a Sexual Violence case. Individuals can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately.

#### **B. Police Assistance**

The university strongly encourages individuals who have experienced Sexual Misconduct to make a report to the police. It is important to note that a police department's geographic jurisdiction depends on where the Sexual Misconduct occurred. If the incident occurred on the university campus, a report may be filed with the SFA University Police Department by calling 936-468-2608 or in person at the police headquarters at 232 East College Street, even if time has passed since the assault occurred. SFA university police can also inform the Complainant on how to obtain a protective order.

Reporting an assault to law enforcement does not mean that the case will automatically go to criminal trial or to a university disciplinary hearing. If the university police are called, an officer will be sent to the scene to take a detailed statement. A report may be filed with the university police even if the assailant is not a university student or employee.

If the incident occurred off-campus a report may be filed with the appropriate law enforcement agency. No matter the location of the incident, SFA university police can assist the Complainant in filing a report with the appropriate law enforcement agency. If a report is made to a law enforcement agency, an officer will usually contact the Complainant to take a written report.

C. Counseling and Other Services

A person who has experienced Sexual Violence is strongly encouraged to seek medical and psychological care even if the person does not plan to report the assault to the police. A person may be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted.

In accordance with this policy, students involved in a case alleging any prohibited behavior related to this policy, including any Complainant, Reporting Party, or Respondent, will be offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident, to the greatest extent practicable based on the number of counselors employed by the institution. A referral will be made by the Title IX coordinator or designee to Counseling Services when there is a request made for counseling to inform counseling services of the need for separate appointment times and providers.

Medical care for students can be provided at the Student Health Clinic, at a local emergency room, or by a private physician. Psychological support for students can be provided by the SFA Counseling Center.

Students desiring counseling should contact:  
SFA Counseling Center  
(936) 468-2401

Faculty and staff should contact:  
Family Crisis Center of East Texas  
(936) 468-7233  
(800) 828-7233 (24 hour crisis line)

## 6.2 Interim Measures and Ongoing Assistance

In addition to the services provided by on- and off-campus providers, the university will take immediate and interim measures to assure the safety and well-being of the Complainant, to maintain an environment free from harassment, discrimination or Retaliation, and to protect the safety and well-being of community members.

For example, if the accused is an employee, interim action may include reassignment and/or suspension. If the accused is a student, interim action may include suspension, no contact orders, changing living arrangements, modifying the course schedule, or modifying other aspects of the educational environment. Interim action may also include allowing the Complainant to move to a new residence hall, change work schedules, alter academic schedules, and withdraw from or retake a class without penalty. Moreover, the university may be able to provide additional accommodations for a Complainant while an investigation is pending.

At the outset of an investigation, students alleging policy violations involving violence, including but not limited to Sexual Assault, domestic violence, Dating Violence, or Stalking, and who are enrolled in the same course with a Respondent, may withdraw from the course without any academic penalty as an interim measure. This same option is available to the Respondent.

## **7. Intake Procedures and Protocol**

### **7.1 Key Officials in an Investigation**

#### **A. Title IX Coordinator**

The Title IX coordinator is the senior university administrator who oversees the university's compliance with Title IX. The Title IX coordinator is responsible for leading the administrative investigation of reports of Sexual Misconduct and is available to discuss options, provide support, explain university policies and procedures, and provide education on relevant issues. The Title IX coordinator may designate one or more deputy Title IX coordinators.

Any member of the university community may contact the Title IX coordinator or a deputy coordinator with questions.

#### **B. Investigators**

The Title IX coordinator will ensure that reported policy violations are properly investigated under this policy. The Title IX coordinator will also ensure that investigators are properly trained at least annually to conduct investigations that occur under this policy.

### **7.2 Assessment of Reported Policy Violation**

The Title IX coordinator or designee will conduct a preliminary assessment of the reported policy violation and determine whether a formal resolution or an informal resolution should occur.

### 7.3 Notification to Complainant of University Offices Offering Assistance

After receiving a reported policy violation, the Title IX coordinator or deputy coordinator shall inform the Complainant of available resources and assistance.

### 7.4 Informal Resolution of Certain Sexual Misconduct Reports. (OPTIONAL)

Informal resolution may be appropriate:

- (a) With a report not involving Sexual Violence as defined in this policy; and
- (b) When both parties are categorically similar (i.e. employee/employee or student/student).

If informal resolution is deemed appropriate by the Title IX coordinator or designee, then the individual will be provided assistance with informally resolving the alleged Sexual Misconduct. Assistance may include, depending on the reported policy violation, providing the Complainant with strategies for communicating with the Respondent that the behavior is unwelcomed and should cease, directing a university official to inform the offending party to stop the unwelcomed conduct, or other informal resolution designed to stop, remedy and prevent future incidents. However, the university may take more formal action, including disciplinary action, to ensure an environment free of Sexual Harassment or Sexual Misconduct. A Complainant may end this informal process at any time and proceed with a formal report and investigation.

#### Timeframe

Informal resolutions should be completed no later than 10 business days after the Title IX coordinator receives the request for informal resolution. Should an informal resolution take longer, a justification for the delay will be provided to the parties by the Title IX coordinator.

#### Confidentiality and Documentation

The university will document informal resolutions. The Title IX coordinator will retain the documentation. If the Complainant or Reporting Party wishes to remain anonymous, the university's ability to establish facts and eliminate the alleged misconduct will be limited. The university will attempt to find the right balance between the Complainant's desire for privacy and confidentiality and its responsibility to provide an environment free of Sexual Misconduct.

### 7.5 Formal Complaint and Investigation

#### Formal Complaint



To begin the investigation process, the Complainant or Reporting Party should submit a signed, written statement setting out the details of the conduct that is the subject of the reported policy violation, including the Complainant's name, signature, and contact information; the name of the person(s) directly responsible for the alleged violation; a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documentation or information that is relevant to the reported policy violation. The university may initiate an investigation regardless of the manner in which a reported policy violation is received; however a detailed written complaint may enhance the investigation. If the complaint is not in writing, the investigator should prepare a statement of what he or she understands the reported violation to be after the initial interview and ask the Complainant to verify that statement.

#### Investigation and Finding(s)

- A. An investigator will be assigned to investigate the reported policy violation.
- B. As part of the investigation process, the Complainant and the Respondent will be provided notice of the reported policy violation and be allowed five (5) business days to respond in writing. If the Complainant or Respondent has evidence that there is a conflict of interest or other bias between them and the Title IX coordinator or investigator assigned to the investigation, such individual should describe and provide the evidence of the conflict of interest or bias in their response. Substantiated conflicts of interest or other bias will be handled in accordance with Section 8.3 of this policy.
- C. As part of their response, the Complainant and the Respondent may present any document or information that is believed to be relevant to the reported policy violation.
- D. Persons thought to have information relevant to the reported policy violation will be interviewed and those interviews will be appropriately documented. Both the Respondent and the Complainant may recommend witnesses for interview and suggest questions that should be asked. Neither the Complainant nor the Respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
- E. After the investigation is complete, a written report<sup>8</sup> will be issued to the Title IX coordinator and the appropriate administrator. The appropriate administrator will depend on the status of the Respondent (i.e., student, faculty, employee, or third party). The report shall include a summary of the

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<sup>8</sup> Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971, to the extent applicable.

reported policy violation and investigation, factual findings, and a conclusion regarding whether a policy violation occurred (based on a Preponderance of the Evidence standard).

- F. Prior to completing the final written report the Complainant and Respondent will be provided an opportunity to review a preliminary report outlining the reported policy violation and investigation process including relevant evidence and factual findings. The Complainant and Respondent will be provided an opportunity to review this information and respond to the investigator if any relevant information or evidence has not been included or is misrepresented in the preliminary report. If necessary, additional investigation or clarifications will be made before completing the final written report, which will include a conclusion regarding whether a policy violation occurred based on preponderance of the evidence.
- G. The Complainant and Respondent shall be informed concurrently in writing of the finding(s). Each will be allowed to inspect the report or, at the university's discretion, be provided letters summarizing the findings in the report in keeping with FERPA and Texas Education Code, Section 51.971 to the extent applicable.
- H. If the Respondent is found responsible for violation of this policy, after the appeal process in Section 7.6 has concluded, the matter will be referred to the appropriate administrator who will impose disciplinary action or sanction(s) in accordance with applicable policies and procedures dependent on the status of the Respondent (i.e. student, faculty, or employee).

## 7.6 Appeal

Each party will have five (5) business days from the date the report/letter is issued via e-mail to each party to submit a written appeal of the finding(s) using the "Sexual Misconduct Appeal of Investigation Findings" online form to the Title IX coordinator. An appeal is not intended to re-hear or re-argue the matter and is limited to the following grounds:

- (a) substantive procedural error that resulted in preventing a fair, impartial, or proper investigation. Deviations from the designated procedures will not be a basis for sustaining an appeal unless material harm or prejudice results;
- (b) discovery of substantial new evidence that was unavailable at the time of the investigation and which reasonably could have affected the findings of the investigator; and/or
- (c) finding(s) not supported by the evidence.

If an appeal is filed, the other party will have two (2) business days to file a response to the appeal.

Appeals will be reviewed within seven (7) business days after being received. The Title IX coordinator will submit all appeal materials to an appeal panel consisting of three (3) members from a pool of trained individuals, typically deputy Title IX coordinators or investigators not affiliated with the matter. The appeal panel may:

- (a) affirm or uphold the determination;
- (b) request further investigation into the reported policy violation; or
- (c) take such other action as may be warranted under the circumstances.

The Complainant and the Respondent shall be informed concurrently in writing of the decision.

#### 7.7 Standard of Proof

All investigations under this policy will use the Preponderance of the Evidence standard to determine violations of this policy.

#### 7.8 Timelines

Barring any unforeseen and reasonable delays, the university will make a good faith effort to conduct a thorough, fair, reliable, and impartial investigation in a timely manner. If an investigation and resolution goes beyond sixty (60) calendar days after the initial report was received and the Respondent was placed on notice the university will notify all appropriate parties in writing of the reason for the delay and the expected time frame adjustment. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

At the request of law enforcement, the university may defer its fact-gathering until after the initial stages of a criminal investigation. The university will nevertheless communicate with the Complainant regarding their rights, procedural options, the status of the investigation, and the implementation of interim measures to ensure the safety and well-being of the Complainant. The university will also communicate with the Respondent regarding the rights, procedural options and information regarding the status of the investigation as they relate to the Respondent. The university will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time.

The university will not wait for the outcome of a concurrent criminal or civil justice proceeding to take action. The university has an independent duty to investigate reported policy violations of Sexual Misconduct.

The filing of a complaint under this policy does not excuse the Complainant from meeting time limits imposed by outside agencies. Likewise, the applicable civil or criminal statute of limitations will not affect the university's investigation of the reported policy violation.

#### 7.9 Remedies

In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, the university will take appropriate action(s), including but not limited to those below to resolve reported policy violations of Sexual Misconduct, prevent any recurrence and, as appropriate, remedy any effects:

- (a) Imposing sanctions against the Respondent, including attending training, suspension, termination or expulsion;
- (b) Ensuring the Complainant and Respondent do not share classes, working environments, or extracurricular activities;
- (c) Making modifications to the on campus living arrangements of the Respondent or Complainant (if the Complainant requests to be moved);
- (d) Providing comprehensive, holistic support services including medical, counseling, and academic support services, such as tutoring;
- (e) Providing the Complainant extra time to complete or re-take a class or withdraw from a class without academic penalty, and minimizing any financial implications to the extent permitted by applicable law or regulation;
- (f) Determining whether Sexual Misconduct adversely affected the Complainant's university standing;
- (g) Conducting, in conjunction with university leaders, a university climate check to assess the effectiveness of efforts to ensure that the university is free from Sexual Misconduct, and using that information to inform future proactive steps that the university will take;
- (h) Providing targeted training for a group of students or employees if, for example, the Sexual Misconduct created a Hostile Environment in a residence hall, department, student organization, or on an athletic team. Bystander intervention and Sexual Misconduct prevention programs may be appropriate;
- (i) Issuing policy statements or taking other steps to clearly communicate that the university does not tolerate Sexual Misconduct and will respond to any incidents and to any individual who reports such incidents.

These remedies are separate from, and in addition to, any interim measures that may have been provided before the end of the university's investigation. If the Complainant did not take advantage of a specific service (e.g., counseling) when

offered as an interim measure, the Complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the Complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

#### 7.10 Sanctions and Discipline

Disciplinary action against faculty and employees will be handled under the university's policies for discipline and dismissal of faculty and employees. Disciplinary actions may include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal. The vice president for university affairs, or designee, will impose disciplinary action, if any, against a student under the university's student disciplinary procedures. Student disciplinary actions may include, but are not limited to, probation, suspension, or expulsion.

In accordance with federal law, when disciplinary action is commenced because of a violation of this policy, both parties will have equal opportunities in all aspects of the sanctioning process including notices and advisor assistance. Further, the standard of proof in determining the outcome will be the Preponderance of the Evidence, as defined in this policy.

### **8. Provisions Applicable to the Investigation**

#### 8.1 Assistance

During the investigation process, a Complainant or Respondent may be assisted by an advisor of their choosing, however, the advisor may not actively represent the Complainant or Respondent in any meeting or interview. Failure to abide by this policy may result in the advisor being dismissed from the meeting or interview.

#### 8.2 Documentation

The university shall document reported policy violations and their resolution and retain copies of all materials in accordance with state and federal records laws and university policy.

#### 8.3 Conflicts of Interest

In the event a conflict of interest (or related bias) exists between a Complainant/Respondent and a university official responsible for any part of the investigation or disposition of the reported policy violation, the university will determine if a conflict of interest (or other related bias) exists, and, if so, make appropriate substitutions for that individual's role in the process.

### **9. Additional Conduct Violations**

#### 9.1 Retaliation

Any administrator, faculty member, student, or employee who knowingly and intentionally engages in any retaliatory action or behavior as outlined in this policy against any individual(s) involved in a case or investigation is subject to additional disciplinary action, up to and including expulsion and/or termination from the university. Individuals considered involved in a case or investigation include, but are not limited to, the Complainant(s); Reporting Party(ies); Respondent(s); any witness(es); and anyone who has, provided information in connection with a violation, and/or participated in an investigation or disciplinary process of a reported violation.

#### 9.2 False Reports

A charge of filing a false report may be made by the university against any person who knowingly and intentionally files a false report under this policy. An individual found responsible is subject to disciplinary action up to and including dismissal or separation from the university. A finding of non-responsibility does not indicate a report was false.

#### 9.3 Interference with an Investigation

Any person who knowingly and intentionally interferes with an ongoing investigation conducted under this policy is subject to disciplinary action up to and including dismissal or separation from the university. Interference with an ongoing investigation may include, but is not limited to:

- (a) attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- (b) removing, destroying, or altering documentation relevant to the investigation; or
- (c) providing false or misleading information to the investigator, or encouraging others to do so.

#### 9.4 No Effect on Pending Personnel or Academic Actions Unrelated to the Reported Policy Violation

The filing of a report under this policy will not stop or delay any action unrelated to the report, including: (1) any evaluation or disciplinary action relating to a Complainant who is not performing up to acceptable standards or who has violated university rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a university employee. Nothing in this section shall limit the university's ability to take interim action.

## **10. Dissemination of Policy and Educational Programs**

### 10.1 Policy Availability and Access

This policy is available to the public online at <http://www.sfasu.edu/policies/>; additionally, a direct link to the policy can be found on the Lumberjacks-Care website ([www.sfasu.edu/lumberjacks-care](http://www.sfasu.edu/lumberjacks-care)) to provide additional related information and resources identified in the policy. References to this policy and related resources will also appear in other university publications. Periodic notices will be sent to university administrators, faculty, staff, and students about the university's Sexual Misconduct policy. All currently enrolled students will be sent email notices at the start of each academic term before the official reporting date. The notice will include information about Sexual Misconduct, including the reporting procedure, and about university disciplinary policies and available resources, such as support services, health, and mental health services. The notice will specify the right to file a complaint under this policy and with law enforcement and will refer individuals to designated offices or officials for additional information.

#### 10.2 Ongoing Sexual Misconduct Prevention Training and Lumberjacks Care Public Awareness Campaign

The university's commitment to raising awareness of the dangers of Sexual Misconduct includes offering ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained university personnel. The university will regularly educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of the policy. Preventive education and training programs will be provided to university administrators, faculty, staff, and students and will include information about risk reduction, including bystander intervention. Training on Sexual Harassment and Sexual Violence policy and procedures will be provided to law enforcement personnel, including training on their obligation to advise university administrators, faculty, staff, and students of their rights to file a complaint under this policy and their right to file a criminal complaint. More information about training and our Lumberjacks Care public awareness campaign can found at <http://www.sfasu.edu/Lumberjacks-Care/>

#### 10.3 Training of Coordinators and Investigators

All Title IX coordinators, deputy coordinators, investigators, and those with authority over the administration of this policy shall receive training each academic year on the elements of this policy.

### **11. Annual Reporting and Notice**

The university's non-discrimination statement will be made available to all students, faculty, and employees online, in required publications, and in specified departments. On a regular basis, and upon any updates to this policy, the university will send notice of its compliance with Title IX as required by law. The notice shall designate the Title IX coordinator and deputy coordinators, explain which offenses are prohibited and where to report violations of

this policy, provide information regarding available resources, and provide a link to this policy and other related university websites.

**Cross Reference:** Faculty Code of Conduct (7.11); Faculty Disagreements (7.25); Tenure and Continued Employment (7.29); Discipline and Discharge (11.4); Grievance and Appeals (11.15); Student Code of Conduct (10.4); 42 U.S.C. § 2000e, e-2, e-3; 42 U.S.C. § 1981; 20 U.S.C. §§ 1681, 1684; 42 U.S.C. § 12101; 29 U.S.C. § 623; 29 U.S.C. § 794; 29 U.S.C. § 206(d); 8 U.S.C. § 1101; Pub. L. 88-352; Pub. L. 102-166; Pub. L. 110-233; Tex. Lab. Code Ch. 21; Tex. Penal Code § 39.03; Tex. Educ. Code §§ 51.9363-.9366

**Responsible for Implementation:** President

**Contact for Revision:** Title IX Coordinator

**Forms:** [Sexual Misconduct Reporting Form](#), [Sexual Misconduct Appeal of Investigation Findings Form](#), [Responsible Employee - Title IX Reporting Form](#)

**Board Committee Assignment:** Academic and Student Affairs