



## Administrative Rules

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**SUBJECT:** Prohibition of Sexual Misconduct

**AR#:** 3.10.003

**Based on Board Policy:**

[FA, Equal Educational Opportunity](#)

[FFDA, \(Students\) Freedom from Discrimination, Harassment, and Retaliation - Sex and Sexual Violence](#)

[DAA, Employment Objectives - Equal Employment Opportunity](#)

[DIAA, \(Personnel\) Freedom from Discrimination, Harassment, and Retaliation - Sex and Sexual Violence](#)

**Recommended by Council/Chancellor:** Chancellor

**Date Approved/Amended:**

06/07/2013, amended 03/24/20, 08/14/20

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### Value Statement

It is the policy of the Austin Community College District (“ACC” or the “College”) to maintain an environment for students, employees, and visitors that is free of all forms of discrimination and harassment, including sex-based discrimination.

The College has enacted this Rule and the corresponding Guidelines/Procedures in compliance with Title IX of the Higher Education Amendments of 1972 and its corresponding regulations, in addition to requirements to respond to sexual harassment under state law. This Rule also incorporates the College’s obligations under the Sexual Violence Elimination Act (SAVE Act), Violence Against Women Act (VAWA), and the Clery Act.

How the institution identifies and responds to reports and complaints of sexual misconduct are also part of this Rule

The College is also committed to providing timely support and assistance to victims of sexual misconduct. Section I below is intended to provide a summary of essential information for persons who need immediate assistance.

“Sexual misconduct” is an umbrella term that refers collectively to the below offenses that are prohibited. Those offenses are the following:

- Sexual Harassment/Discrimination
- Sexual Assault, which includes Non-Consensual Sexual Penetration and Sexual Touching
- Intimate Partner Violence which includes Dating Violence and Domestic Violence

Chancellor: Richard M. Rhodes Date: 08/14/20

- Sexual Exploitation
- Stalking
- Gender-based harassment and discrimination that is non-sexual

Students or employees who experience an incident of sexual misconduct should consider the information and resources provided below. Full definitions of the above offenses are found later in this Rule.

## **I. OPTIONS FOR ASSISTANCE FOLLOWING AN INCIDENT OF SEXUAL ASSAULT**

Any ACC student or employee who experiences or is affected by violations under this policy, whether as a Complainant<sup>1</sup> or a Respondent<sup>2</sup>, will have equal access to support and counseling services through the College, including supportive measures as outlined later in this Rule.

The College strongly encourages individuals to report Prohibited Conduct. The College recognizes, however, that the decision to report Prohibited Conduct (to the College and/or law enforcement) can be difficult. The College strongly encourages individuals who are considering whether to report Prohibited Conduct to seek the support of confidential campus and community resources, listed in this Rule, in particular the licensed professional counselors at the College available for all students, or through the College's Employee Assistance Program for employees. These support resources are available regardless of when or where the incident occurred.

There are many resources available on campus and in the surrounding community. These resources are continually updated and provided in the College's Compliance Resource Guide which can be found online at the following link, or by requesting a copy from the [Compliance Office](#). As noted below, there are Confidential Resources which by law cannot share information without the consent of the individual seeking assistance (in most circumstances).

### **IMMEDIATE ASSISTANCE**

1. ACC Confidential Mental Health and Counseling Resources: Any student in need of immediate emotional or mental health support should contact ACC District Clinical Counseling Services and request to speak with a confidential counselor. To schedule a meeting with a clinical counselor, please call the centralized confidential reporting line at: (512) 223-2616. To schedule online: <https://www.austincc.edu/students/counseling>
2. For employees, Austin Community College's Employee Assistance Program (EAP) provides free and confidential assessment, short-term counseling, prevention, education, and referral services for employees and their dependents. Trained counselors are available 24/7, 365 days of the year and employees have access to a number of confidential sessions with a counselor at no cost. More information on accessing the EAP may be accessed at: <http://www.austincc.edu/eap>

Employees are also encouraged to utilize the College's Ombudsperson as a resource. If an employee has experienced Prohibited Conduct but is not ready to, or does not wish to make

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<sup>1</sup> "Complainant" means an individual who is alleged to be the victim of conduct alleged under this Rule.

<sup>2</sup> "Respondent" means an individual who has been reported to be the perpetrator of conduct alleged under this Rule.

a report, the College's Ombudsperson provides a neutral, informal, and independent forum to listen to faculty and staff concerns, help identify options and next steps, facilitate communication between parties, clarify policies and procedures, and discuss resources. Ombudsperson: 512-223-1070. ACC faculty and staff may make an appointment online at <https://calendly.com/acc-ombuds>

3. Victims (employees or students) may also contact SAFE (an off-campus non-profit sexual violence resource center) to speak with a confidential advocate 24 hours a day, 7 days a week by calling (512) 267-SAFE (7233).

Access SAFE's website at <http://www.safeaustin.org/learn-more/sexualassault/>

4. Reporting: Students and employees who experience sexual misconduct are *strongly* encouraged to report this to College authorities and to the police in order to protect themselves and others. A victim is not required to make a formal incident report or file charges. Support and safety measures will be available regardless of whether a formal incident report is made, or charge filed. To file a report, any person can contact any of the following:

- a. District Title IX Coordinator: (available during regular business hours) Charlene Buckley, District Title IX Coordinator, 5930 Middle Fiskville Road, Austin, TX 78752  
E-mail: [charlene.buckley@austincc.edu](mailto:charlene.buckley@austincc.edu) or [charlene.buckley@austincc.edu](mailto:charlene.buckley@austincc.edu)  
Phone:(512) 223-7964.

*(Reporting to the District Title IX Coordinator will not result in a criminal investigation but will result in a victim receiving resources and options and may result in an administrative investigation to determine if this Rule was violated. If the incident occurred on campus, limited information will be shared with the District Police for purposes of determining if a Timely Warning Notice should be sent out to the community and for purposes of capturing and counting crime data.)*

- b. The ACC District Police Department (ACCPD): <http://www.austincc.edu/police> (Visit their website to access the correct address and/or telephone number for the appropriate campus or see contact information for each campus in the Compliance Resource Guide either online at the following link or by requesting a copy from the [Compliance Office](#).)

*(Reporting to the ACC District Police may initiate a criminal investigation into your complaint. The District Chief of Police will also determine if a Timely Warning Notice should be sent out to the community and will capture and count crime data if the offense was reported to have occurred on campus or on a property owned or controlled by the institution. The District Police will report your complaint to the District Title IX Coordinator.)*

- c. Local police and sheriff's departments: (available 24 hours a day, 7 days a week) Call 911 for emergencies, 311 for non-emergencies. Updated contact information for local police departments near all ACC campuses are included in the Compliance Resource Guide either online at the following link or by requesting a copy from the [Compliance Office](#). *Important note:* Local police departments may not share the details of your report with ACC (however, the ACC District Police must notify the District Title IX Coordinator of a report made to their office). If you report to local or city police, you should also report to the District Title IX Coordinator so on campus supportive measures and resources may be provided.

## MEDICAL TREATMENT AND EVIDENCE PRESERVATION

As of January 2009, victims of sexual assault may have a sexual assault forensic exam (SAFE) without reporting it to law enforcement.<sup>3</sup> A victim will not be required to pay for the cost of a sexual assault forensic exam. The Texas Department of Public Safety pays for the forensic portion of the exam if not reported to law enforcement. If law enforcement is investigating the assault, that law enforcement agency will pay for the portion of the forensic exam. The forensic exam does not include medical treatment, or costs associated with that treatment. If a report to law enforcement is made, a victim may be eligible for reimbursement of expenses through the state's Crime Victims' Compensation Fund. For information about Crime Victim's Compensation visit [www.oag.state.tx.us/victims/about\\_comp.shtml](http://www.oag.state.tx.us/victims/about_comp.shtml) or call 1-800-983-9933.

ACC does not have on-campus Student Health Facilities. For up to date contact information on facilities in Central Texas that will provide such examinations please refer to the Compliance Resource Guide either online at the following link or by requesting a copy from the [Compliance Office](#). If a facility is not considered a SAFE-ready facility, the facility must either transfer the victim to a SAFE-ready facility or receive consent to provide the required care.

State law allows an individual to have the sexual assault forensic exam (SAFE) up to 120 hours (5 days) after the sexual assault. An individual can report to law enforcement if the person chooses to do so. In Texas, you have ten years (statute of limitations on sexual assault) to make the report. Having a sexual assault forensic exam conducted allows an individual to preserve evidence that will be lost over time before you decide how to proceed.

ACC District police officers and local police officers encourage victims to report the sexual assault even if it is past the statute of limitations. The case cannot go forward with prosecution, but it is important to document the assault and the perpetrators who commit them (in addition to allowing ACC to prevent reoccurrence of similar crimes, if applicable).

In circumstances of sexual assault, if a victim does not opt for forensic evidence collection, health care providers still can treat injuries and take steps to address concerns of pregnancy and/or sexually-transmitted infection. It is important that a victim of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where she or he was assaulted within 120 hours after the incident occurred so that evidence may be preserved.

Victims of sexual assault, domestic violence, dating violence, or stalking also are encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if any exist, that may be useful to College investigators, the ACC District Police Department, or local police.

Taking the steps to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this Rule or through the pursuit of criminal prosecution, and may be helpful in obtaining protective orders and/or proving that a crime of violence occurred.

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<sup>3</sup> Violence Against Women Act, 2005.

## **INTERIM SUPPORT AND SAFETY MEASURES**

A victim may make a request for interim support and/or safety measures to the District Title IX Coordinator. The victim does not need to participate in an investigation or file charges in order to request such interim support and/or safety measures. The District Title IX Coordinator will work in conjunction with relevant parties to determine which measures are appropriate to ensure the victim's safety and equal access to educational programs and activities. Interim support and/or safety measures include:

- Support measures related to academics, transportation, and working environment. If an alleged perpetrator and alleged victim are enrolled in the same class, a request to drop the class without any academic penalty will be granted.
- Relocation in their on-campus job if either will bring them into proximity with the alleged perpetrator. Victims may also request changes to their class schedule if they have classes in common with the alleged perpetrator.
- A mutual "no-contact" order may be put in place between the parties or if the alleged perpetrator is a non-ACC member, the institution should work with law enforcement to prohibit the party from entering campus property.
- For information about loan repayment, including financial aid student success workshops and potential emergency loans, please visit:
- <http://www.austincc.edu/tuition-and-financial-aid/obtain-financial-aid>.
- Resources regarding adjustment of the work schedule or leave for employees who are victims are available through the Human Resources Department.

## **INVESTIGATIONS**

Victims who wish to pursue an investigation may choose to:

1. Contact the ACC District Police Department to pursue a criminal investigation if the reported conduct occurred on property owned or controlled by ACC.
2. Contact the local police department or sheriff's department in the jurisdiction where the reported incident occurred, to pursue a criminal investigation.
3. File a civil complaint in a civil court. (This action may require you to obtain your own attorney.)
4. Report to the ACC District Title IX Coordinator (see contact information in this Rule). An investigation of a Rule violation is independent from criminal or civil investigations, and the District Title IX Coordinator accepts complaints of all kinds of conduct (criminal and non-criminal) as well as conduct that occurred on and off campus. Depending on the conduct alleged, the College will respond to a request for an investigation through one of the corresponding procedures outlined in Guidelines/Procedures 3.10.003.1 and 3.10.003.2. These include the College's Title IX Grievance Procedures (GP 3.10.003.) and its Sexual Misconduct Grievance Procedures (GP 3.10.003.2).
5. Decide not to file charges or make a report for investigation. Victims are strongly encouraged but not required to report the incident. Victims have the right to be free from any suggestion that victims must report the crime to be assured of any other rights or resources. Campus personnel will not pressure victims to report a crime if the victim does not wish to report but

will assist any person in filing a report with law enforcement no matter where the misconduct occurred.

6. Report anonymously online through the link below, which is provided on the College's homepage: [austincc.edu/titleix](http://austincc.edu/titleix)
7. A victim may report to any or all of the above and have concurrent criminal and administrative investigations. ACC will not wait for the completion of a criminal investigation to begin or to conduct its administrative investigation. ACC will consider timely requests by law enforcement that will not unreasonably delay an internal investigation or adjudication process.

## **II. POLICY STATEMENT**

So that the College may continue to foster a climate of respect and security on its campuses and ACC owned or operated sites as it relates to preventing and responding to acts of sexual misconduct as defined by College Policy, this Rule has been created and serves to demonstrate the College's commitment to:

- Prohibiting all forms of gender and sex-based harassment and discrimination, defined as "sexual misconduct" by ACC, to include sexual harassment, sexual assault (including non-consensual sexual penetration (rape) and contact (fondling), incest, and statutory rape), sexual exploitation, stalking, dating violence, and domestic violence as well as gender-based harassment and discrimination that is non-sexual;
- Disseminating clear policies and procedures for responding to sexual misconduct reported to the College;
- Responding to and addressing reports of sexual misconduct that may not rise to the level of unlawful discrimination or harassment in order to prevent a hostile environment from occurring;
- Delivering primary prevention and awareness programs and ongoing training and education campaigns to students and employees so they may identify what behavior constitutes sexual misconduct; understand how to report such misconduct; recognize warning signs of potentially abusive behavior and ways to reduce risks; and learn about safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against another person;
- Engaging in investigative inquiry and resolution of reports that are prompt, fair, equitable, and independent of other investigations that may occur;
- Supporting and protecting the rights of complainants and respondents, as well as holding persons accountable for established violations of College Policy and this Rule;
- Providing a written explanation of the rights and options available to every student or employee who has been the victim of domestic violence, dating violence, sexual assault or stalking, regardless of whether the offense occurred on or off campus;
- Identifying how students and employees can report sexual misconduct to the College confidentially and what resources are available both on and off campus to aid them, including employees' and students' rights to notify local law enforcement and their right also to decline to notify such authorities;

- Providing information about how reports are assessed, investigated, and resolved; and
- Providing the College with a means to take all reasonable steps to identify harassment, prevent reoccurrence of any harassment, and to correct its discriminatory effects on the complainant and others, if appropriate.

A. ACC's Prohibition Against Sex Discrimination and Sexual Misconduct

ACC does not discriminate on the basis of sex in its educational, extracurricular, or other programs, or in the context of employment. Sex discrimination – including pregnancy and related conditions – is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

College Policy prohibits all forms of sex and gender-based discrimination, harassment, and misconduct, including non-consensual sexual penetration (rape), non-consensual sexual contact (fondling), intimate partner violence (dating violence and domestic violence), sexual exploitation, incest and statutory rape, and stalking. College Policy also prohibits retaliation against a person who reports, complains about, or who otherwise participates in good faith in, any matter related to this Rule. All of the foregoing forms of sexual misconduct shall be referred to in this Rule as “Prohibited Conduct”. Engaging in any Prohibited Conduct or any other misconduct identified in this Rule, including the corresponding Guidelines/Procedures, can be a violation of College Policy even if the behavior does not rise to the level of unlawful conduct.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964 (relating to employment), the Texas Penal Code, and other applicable statutes. College Policy prohibits sexual harassment against ACC community members (as defined in Section III(A)) on the basis of sex, sexual orientation, gender identity, or gender expression in the context of education or employment. College Policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

ACC also prohibits other forms of discrimination and harassment, including discrimination and harassment on the basis of race, color, national origin, ethnicity, ancestry, age, religious belief, marital status, physical or mental disability, medical condition, veteran status, or any other characteristic protected by federal, state, or local law. Such prohibited conduct is addressed in other Board Policies and Administrative Rules prohibiting discrimination, harassment and retaliation based on protected status (other than sex or gender).

B. Commitment to Address Sexual Misconduct

Upon receipt of a complaint or a report, the College will take prompt and equitable action to eliminate the Prohibited Conduct (if any is found to have occurred), prevent its recurrence, and remedy its effects. In addition, the College will fulfill its obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) which made amendments to the Jeanne Clery Disclosure of Campus Security Policy, Campus Crime Statistics Act (“Clery Act”). The College will also comply with state law provisions prohibiting sexual harassment, and with the Title IX regulations, in response to reports of Prohibited Conduct.

Pursuant to the corresponding procedures outlined in Guidelines/Procedures 3.10.003.1 and 3.10.003.2, students or employees who are found to have violated College Policy and this Rule may face disciplinary action up to and including expulsion (students) or termination of employment (faculty, staff, or other employees).

### III. SCOPE OF POLICY

This Rule and its corresponding procedures in Guidelines/Procedures 3.10.003.1 and 3.10.003.2 shall apply to reports of Prohibited Conduct occurring on or after the effective date of this Rule. Where the date of the reported Prohibited Conduct precedes the effective date of this Rule, the definitions of misconduct in existence at the time the report is made will be used.

When used in this Rule, “Complainant” usually refers to the individual who is identified as the subject alleging to have been harmed by the Prohibited Conduct. “Respondent” refers to the individual alleged to have engaged in Prohibited Conduct. In limited circumstances the College may serve as the Complainant, or the Title IX Coordinator may sign a Formal Complaint. In the case of dual credit or early college high school students, complaints of Prohibited Conduct may be filed on behalf of minor students, except for Formal Complaints.

#### A. Persons Covered

This Rule implements Board policy and applies to all ACC community members, including students<sup>4</sup>, faculty, administrators, staff, volunteers, vendors, contractors, visitors, and individuals regularly or temporarily employed, conducting business, studying, visiting, or having any official capacity with the College or on its property.

The College strongly encourages reports of Prohibited Conduct regardless of who engaged in the conduct. Even if the College does not have jurisdiction over the Respondent, the College will take prompt action to provide for the safety and well-being of the Complainant and the broader campus community and prevent recurrence, if possible.

#### B. Confidentiality and Privacy

##### *i. Privacy and Confidentiality: Understanding the Differences*

The College is committed to protecting the privacy of all individuals involved in the investigation and resolution of reports under this Rule. The College is also committed to assisting students, employees, and Third Parties in making informed choices.

With respect to any report under this Rule, the College will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to provide due process, take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. All College

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<sup>4</sup> Dual credit students are subject to this policy. For purposes of this policy, unless otherwise defined, a student is someone who is not currently enrolled but is registered for classes in the future, was previously enrolled and is able to enroll in the future, or withdraws any time after notification of the allegation. Students who also serve in the capacity of an employee of the College will be subject to the procedures determined by the District Title IX Coordinator to be most appropriate.

employees who are involved in the College's Title IX response receive specific instruction about respecting and safeguarding private information.

Privacy and confidentiality have distinct meanings under this Rule.

**ii. *Privacy***

"Privacy" generally means that information related to a report of Prohibited Conduct will only be shared with a limited circle of individuals who "need to know" in order to assist in the assessment, investigation, or resolution of the report. These individuals will be discreet and respect the privacy of all individuals involved in the process.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in Administrative Rule 3.03.015, which details the College's obligations regarding the confidentiality of student records.

The privacy of an individual's medical and related records may be protected by the Health Insurance Portability and Accountability Act ("HIPAA"), excepting health records protected by FERPA and by Texas state law. Access to an employee's personnel records may be restricted by applicable Texas and federal law.

The College must keep confidential the identity of any individual who makes a report or complaint of Prohibited Conduct, the identity of the respondent, and any witness, except as permitted by FERPA, or as required by other law, or to carry out the Title IX Grievance and Sexual Misconduct Investigation procedures set forth in Guidelines/Procedures 3.10.003.1 and 3.10.003.2.

ACC's employment policies set forth disciplinary consequences for an employee who improperly releases confidential student information.

**iii. *Confidentiality***

"Confidentiality" generally means that information shared by an individual with designated authority on a campus or to community professionals that cannot be revealed to any other person without the express permission of the individual.

The confidentiality of information shared by an individual with designated campus or community professionals generally is governed by Texas law, including restrictions on disclosure of information by mental health providers, ordained clergy, rape crisis counselors, and attorneys, all of whom have legally protected confidentiality.

An individual who seeks confidential assistance may do so by speaking with professionals who have legally protected confidentiality. These confidential professional resources are prohibited from breaking confidentiality unless required by law, including in response to a subpoena or court orders, or when there is an imminent threat of harm to self, others, or College property; or when the individual has given written consent to disclose his/her information; or when the confidential resource is required to notify the Department of Family Protective Services and/or local law enforcement of any report that involves suspected or known abuse or neglect of a minor under the age of 18, or an adult who by law is considered to think like a child, or a person over 65 years of age.

*iv. Disclosures Required by the Clery Act*

*1. Timely Warnings*

A “Timely Warning” or “Crime Alert” is a District-wide notification of a Clery crime that poses a serious or continuing threat to the ACC community. The Timely Warning does not include identifying information about the victim. If a report of misconduct discloses a serious or continuing threat to the ACC community, the College will issue a District-wide timely warning or crime alert (which will take the form of an email and text message sent to the entire ACC community) to protect the health or safety of the community.

*2. Emergency Notification*

An “Emergency Notification” is a District-wide notification upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.

*3. Annual Reporting Responsibilities*

The College receives federal funding, and therefore is obligated to issue publicly an Annual Security Report (“ASR”) which identifies the number of particular types of reported crimes on campus or campus owned or controlled property, or adjacent to campus. The ASR does not include identifying information about the Complainant or Respondent.

*4. Crime Log*

The College must maintain a daily crime log that includes entries for all crimes that occur within both the Clery geography and the ACC District Police Department’s patrol jurisdiction. The crime log does not include identifying information about the Complainant or Respondent.

C. Interim and Supportive Measures

***Overview***

Upon receipt of a report of Prohibited Conduct the College will provide reasonable and appropriate supportive measures designed to restore or preserve equal access to the College’s education program or activity. Supportive measures are non-disciplinary, non-punitive individualized services available to both a Complainant and Respondent, without a fee or charge. The College will make reasonable efforts to communicate with the Parties to ensure that all safety, emotional and physical well-being concerns are being addressed. Supportive measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the College, and regardless of whether the crime is reported to ACC District Police or local law enforcement.

A Complainant or Respondent may request a No Contact Order or other protection, or the College may choose to impose supportive measures at its discretion to ensure the safety of all Parties, the broader College community, and/or the integrity of the process. Any request for a No Contact Order will result in mutual no contact orders for both Parties.

The College will maintain the privacy of any supportive measures provided under this Rule to the extent practicable and will promptly address any violation of the supportive measures, when applicable. All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by a supportive measure. The College will take immediate and responsive action to enforce a previously implemented restriction if such restriction was violated.

***Range of Interim and Supportive Measures***

After careful consideration, supportive measures will be implemented at the discretion of the College. Potential supportive measures which may be applied include:

- Access to counseling services and assistance in setting up an initial appointment;
- Imposition of mutual “No Contact Order;”
- Rescheduling of exams and assignments;
- Providing alternative course completion options;
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections;
- Change in work schedule or job assignment;
- Limiting an individual’s or organization’s access to certain College facilities or activities pending resolution of the matter;
- Voluntary leave of absence;
- Providing a police escort to ensure safe movement between classes and activities;
- Assisting with access to medical services;
- Providing academic and student success support services;
- Emergency Removal (students) or /administrative leave (employees);
- Any other remedy that can be tailored to the involved individuals to reasonably achieve the goals of College Policy and this Rule.

**IV. REPORTING POLICIES AND PROTOCOLS**

The College strongly encourages all victims to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual or intimate partner violence. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.

The College also strongly encourages all victims to make a report to the College and to law enforcement, although neither is required. These reporting options are not mutually exclusive. Both internal and criminal reports may be made simultaneously. Reports can also be made anonymously online through a link provided on the College’s homepage.

The College has a strong interest in maintaining a safe environment and will not tolerate the occurrence of sexual harassment, sexual assault, stalking, and intimate partner violence and strongly encourages all affected individuals to report any incident to the College.

A. Employee Requirement to Report & Responsible Employees

All employees, with the exception of certain confidential employees, are designated as Responsible Employees. Pursuant to state law and College Policy, Responsible Employees who, in the course and scope of employment, witness or receive information regarding the occurrence of an incident that the employee reasonably believes constitutes discrimination, sexual harassment, gender-based harassment, sexual assault, dating violence, domestic violence, stalking, and/or sexual exploitation and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the Title IX Coordinator.

Employees who receive reports or become aware of conduct in the course and scope of their employment, are required to report such incidents described above that involve a student or an employee, regardless of when or where the incident occurred.

State law and College Policy require that all Responsible Employees share a report of sexual misconduct with the District Title IX Coordinator, even if a request for confidentiality has been made. The purpose of this requirement is to permit the College to take immediate and corrective action to respond to allegations of Prohibited Conduct.

An employee is not required to report an incident in which they were a victim, or when information is received due to a student or employee's disclosure at a public awareness event sponsored by the College or a student organization affiliated with the institution. An exception to this is if an employee with 'actual knowledge' receives a report at a public awareness event. Under Title IX, employees with actual knowledge must report without exception. Administrators are employees who have been designated by the College as employees with actual knowledge.

A person may desire to report Prohibited Conduct to the College but to maintain confidentiality; if so, the District Title IX Coordinator will evaluate such requests. Where a Complainant requests that the Complainant's name or other identifiable information not be shared with the Respondent or that no formal action be taken, the District Title IX Coordinator will balance the Complainant's request with the College's dual obligation to provide a safe and nondiscriminatory environment for all College community members and to remain true to principles of fundamental fairness that ordinarily provide for notice and an opportunity to respond before action is taken against a Respondent.

In making this determination, the College may consider a number of factors including the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant.

Where the College is unable to take action consistent with the request of the Complainant, the District Title IX Coordinator will inform the Complainant about the chosen course of action.

**B. Reports of Prohibited Conduct vs. Filing a Formal Complaint & Requests for Confidentiality**

Any individual, even if he/she is not the alleged victim, can report Prohibited Conduct in a variety of ways including in person, by mail, telephone, through the anonymous reporting link on the College's homepage, or by e-mail to the College's District Title IX Coordinator.

Making a report also means telling a Responsible Employee what happened – in person, by telephone, in writing, or by email. At the time a report is made, a Complainant does not have to request any particular course of action, nor does a Complainant need to know how to label what happened.

Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions and will respect an individual's autonomy in deciding how to proceed to the extent legally possible. In this process, the College will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

The College will investigate reports of Prohibited Conduct through one of the corresponding procedures outlined in this Rule's Guidelines/Procedures. Two separate procedures outlined in Guidelines/Procedures include the following: Guidelines/Procedures 3.10.003.1 'Title IX Grievance Procedures' and Guidelines/Procedures 3.10.003.2 'Sexual Misconduct Investigation Procedures'.

A report of Prohibited Conduct is distinct from a Formal Complaint. A Formal Complaint is required in order to proceed under the College's Guidelines/Procedures 3.10.003.1 Title IX Grievance Procedures. A Formal Complaint must be filed by a Complainant and submitted to the Title IX Coordinator using the contact information provided above and in Section IV. The filing may be in person, by mail, or by e-mail. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the College's education program or activity. In limited circumstances the Title IX Coordinator may sign a Formal Complaint.

If a Complainant requests in writing that the College not investigate a report of Prohibited Conduct, the Title IX Coordinator must inform the Complainant of the decision whether or not to investigate.

**C. District Title IX Coordinator**

The Austin Community College District is composed of eleven (11) campuses and many other locations that are owned or controlled by the College. As such, it has a large number of employees and students and is spread throughout various cities and counties across the state of Texas. In order to fulfill the duties associated with this Rule and its resolution procedures and to ensure that students and employees impacted by Prohibited Conduct have access to administrators with responsibility for this Rule and resolution procedures, the District has appointed a District Title IX Coordinator to oversee compliance with Title IX and state law prohibiting sexual harassment.

The District Title IX Coordinator monitors the College's overall compliance with Title IX and state law prohibiting sexual harassment, ensures appropriate training and education is provided, and oversees the College's investigation, response, and resolution of reports made under this Rule. Upon receiving reports of Prohibited Conduct, the District Title IX Coordinator ensures that appropriate action is taken to eliminate that conduct, prevent its reoccurrence, and remedy its effects, in addition to facilitating the provision of supportive measures.

The District Title IX Coordinator is available to inform all individuals, including individuals who have experienced misconduct, individuals who are alleged to be responsible for misconduct, and witnesses or other participants in any investigation procedures, on this Rule and the corresponding procedures in Guidelines/Procedures 3.10.003.1 and 3.10.003.2.

The College has designated Charlene Buckley to serve as the College's Title IX Coordinator. The District Title IX Coordinator can be contacted by telephone, email, or in person during regular office hours.

To contact the District Title IX Coordinator:

Charlene Buckley  
Highland Business Center  
5930 Middle Fiskville Road  
Austin, TX 78752  
Direct Phone: (512) 223-7964  
Email: [charlene.buckley@austincc.edu](mailto:charlene.buckley@austincc.edu); or [compliance@austincc.edu](mailto:compliance@austincc.edu)  
<https://www.austincc.edu/title-ix>

The U.S. Department of Education's Office for Civil Rights (OCR) is responsible for overseeing institutional noncompliance with Title IX. To file a report directly with the U.S. Department of Education, use the contact information below.

<u>The OCR office for Texas is located at:</u>	<u>The OCR National Headquarters is located at:</u>
Dallas Office	U.S. Department of Education
Office for Civil Rights	Office for Civil Rights
U.S. Department of Education	Lyndon Baines Johnson Department of
1999 Bryan Street, Suite 1620	Education Bldg.
Dallas, Texas 75201-6810	400 Maryland Avenue, SW
Telephone: 214-661-9600	Washington, DC 20202-1100
FAX: 214-661-9587; TDD: 800-877-8339	Telephone: 800-421-3481
Email: <a href="mailto:OCR.Dallas@ed.gov">OCR.Dallas@ed.gov</a>	FAX: 202-453-6012; TDD: 800-877-8339
	Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a>

D. Amnesty for Alcohol or Other Drug Use or Other Conduct Violations

College Policy strongly encourages the reporting of Prohibited Conduct. It is in the best interest of the College community that as many Complainants as possible choose to report to College officials and that participants in the investigation process are forthright in sharing information.

To guard against discouraging reporting, a student who reports Prohibited Conduct in good faith, either as a victim or a witness, will not be subject to disciplinary action by the College for personal consumption or possession of alcohol<sup>5</sup> or drugs or other violations of the College's student standards of conduct rules (not including this Rule) at or near the time of the incident. The College may investigate to determine whether a report of Prohibited Conduct outlined in this Rule was made in good faith.

The College may always initiate an educational discussion or pursue other educational remedies with the student regarding alcohol or other drugs. Being intoxicated by drugs or alcohol is no defense to any violation of this Rule and does not diminish one's responsibility to obtain consent.

#### E. Coordination with Law Enforcement

The College strongly encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence, and intimate partner violence that may also be crimes under Texas law. The Compliance Office will assist a Complainant in making a criminal report with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

College Policy, this Rule, the definitions of conduct, and the burden of proof in an investigation or proceeding differ from Texas criminal law. A Complainant may seek recourse under this Policy and/or pursue criminal action. Law enforcement's determination whether or not to prosecute a Respondent, and the outcome of any criminal prosecution, are not determinative of whether a violation of College Policy has occurred. Proceedings under College Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

The College will not wait for the outcome of a concurrent criminal or civil proceeding before it begins its response to a request to investigate Prohibited Conduct. On a case-by-case basis and only when good cause exists, the College may delay the Grievance or Investigation Procedures outlined in Guidelines/Procedures 3.10.003.1 and 3.10.003.2, subject to providing written notice to the Parties.

#### F. False Reports

The College takes the accuracy of information very seriously, as a report of Prohibited Conduct may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated report of Prohibited Conduct. However, when a Complainant or witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action. It is a violation of College Policy and this Rule to make an intentionally false report of Prohibited Conduct, and it may also violate state criminal statutes and civil defamation laws.

#### G. Reports Involving Minors or Suspected Child Abuse

Under Texas law, an individual must make a mandatory report of suspected child abuse and neglect, including sexual assault, when that individual, in their professional capacity or

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<sup>5</sup>Alcoholic Beverage Code Sections 106.04 and 106.05.

within the scope of their employment, has knowledge of, or observes, a minor under the age of 18 whom the individual knows or reasonably suspects has been the subject of child abuse or neglect.

Reports of child abuse should be made to any local or state law enforcement agency or to the Department of Family and Protective Services. It is not the responsibility of any employee, student, or volunteer to investigate suspected child abuse. This is the role of Child Protective Services and/or law enforcement authorities.

In addition, if the abuse involves conduct defined under College Policy and the student is a minor, employees are additionally required to also notify the District Title IX Coordinator.

- If a child is in immediate danger, call 911.
- If there is no immediate danger, contact the Texas Child Protective Services by calling 1-800-252-5400.

## V. **PROHIBITED CONDUCT & DEFINITIONS**<sup>6</sup>

### A. Sex or Gender-Based Harassment and Discrimination

Sex or gender-based discrimination refers to the disparate treatment of a person or group because of their sex, sexual orientation, gender identity or gender expression.

#### *i. Sexual or Gender-Based Harassment: Title IX Sexual Harassment and State Law Sexual Harassment*

College Policy prohibits sexual harassment as defined below. The College's investigation procedures in response to conduct alleging Title IX Sexual Harassment will be pursuant to Guidelines/Procedures 3.10.003.1 Title IX Grievance Procedures. Conduct that does not fall under the Title IX Grievance Procedures will be investigated under Guidelines/Procedures 3.10.003.2 Sexual Misconduct Investigation Procedures.

- a. "Sexual harassment" under Title IX regulations means conduct on the basis of sex that satisfies one or more of the following:
  1. An employee of the College District conditioning the provision of an aid, benefit, or service of the College District on an individual's participation in unwelcome sexual conduct, otherwise referred to as 'quid pro quo' sexual harassment;
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College District'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\(a\)\(30\)](#).

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<sup>6</sup> Definitions included in this Rule are the definitions of Prohibited Conduct adopted by the College. Where state law definitions under the Penal Code or Family Code may differ, the College has provided this information. State law definitions apply to criminal investigations.

- b. "Sexual harassment" as defined under state law is broader than the definition of Title IX Sexual Harassment and means unwelcome, sex-based verbal or physical conduct that:
1. In the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
  2. 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 as the College<sup>7</sup>.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, physical, graphic, or otherwise. Sexual harassment that does not rise to the level of unlawful harassment may still be considered a violation of College Policy and this Rule.

"Unwelcome Conduct" is conduct that was not requested or invited by the individual or others, and the conduct was regarded as undesirable or offensive<sup>8</sup>. Unwelcome sexual conduct that is mildly offensive or involves isolated incidents that are not pervasive or severe and have not deprived an individual of access to employment or educational programs, is not considered unlawful sexual harassment under Title IX. However, conduct or behavior of this nature may still be considered a violation of College Policy. The College has zero tolerance for any unwelcome conduct of a sexual nature and will take appropriate corrective action if the alleged conduct is substantiated.

Administrators or supervisors should take corrective action when inappropriate incidents occur in order to address the behavior or prevent similar conduct from occurring so that the behavior does not become unlawful harassment. Reports of conduct as alleged that do not rise to the level of unlawful Prohibited Conduct may still be considered a violation of College Policy and may be addressed through this Rule. If the alleged conduct rises to the level of unlawful harassment, the conduct must be addressed through this Rule.

"Gender-Based Harassment" is harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, physical, graphic, or otherwise. To qualify as Gender-Based Harassment, the conduct need not involve conduct of a sexual nature. Gender-based harassment that does not rise to the level of unlawful harassment under Title IX is considered a violation of College Policy.

"Unlawful Harassment" is conduct that creates an intimidating, offensive, or hostile working or learning environment or that unreasonably interferes with work or academic performance based on a person's protected status, including sex, sexual orientation, gender identity, or gender expression.

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<sup>7</sup> Texas Education Code Section 51.251(5).

<sup>8</sup> Office for Civil Rights, *Revised Sexual Harassment Guidance* (66 Fed. Reg. 5512, Jan. 19, 2001)

Generally speaking, unlawful harassment can be divided into two types of conduct:

1. **Quid Pro Quo Harassment.** Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in any aspect of a College program or activity or is used as the basis for the College's decisions affecting the individual.
2. **Hostile Environment.** A hostile environment exists when the conduct is sufficiently severe, pervasive, or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the College's education or employment programs and/or activities. Whether conduct is sufficiently severe, pervasive, or persistent is determined both from a subjective and objective perspective.

Sexual or Gender-Based Harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, sexual orientation, gender identity, or gender expression.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the Parties are alone.
- May affect the Complainant and/or third Parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute Sexual Harassment as defined above may include (but are not limited to) one or more of the following:

- **Physical conduct**, including unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements, or unwanted sexual advances;
- **Verbal conduct**, including making or using derogatory comments, epithets, slurs or humor; verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; or objectively offensive

comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes;

- **Visual conduct**, including leering, making sexual gestures, displaying of suggestive objects, pictures, videos, cartoons, or posters in a public space or forum; or severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate;
- **Written conduct**, including letters, notes, text messages, direct messages, emails and any other form of electronic communications containing comments, words, or images described above;
- **Quid pro quo conduct**, including direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists; offering educational or employment benefits in exchange for sexual favors; making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose; or making or threatening reprisals after a negative response to sexual advances.

Harassing conduct can take many forms. The determination of whether an environment is hostile is based on the totality of the circumstances, including but not limited to: (1) the frequency of the conduct; (2) the nature and severity of the conduct; (3) whether the conduct was physically threatening; (4) the effect of the conduct on the Complainant's mental or emotional state, with consideration of whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or College programs or activities; (5) whether the conduct was directed at more than one person; (6) whether the conduct arose in the context of other discriminatory conduct; and (7) whether the conduct implicates concerns related to academic freedom or protected speech.

A single isolated incident may create a hostile environment if the incident is sufficiently severe, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression is typically not sufficient to constitute a hostile environment but may still be considered Prohibited Conduct that violates College Policy.

The College is committed to academic freedom and free speech. This commitment requires that the College protect individual's expression of ideas in their teaching and learning including topics that may be controversial, provocative, or unpopular. This protection extends to the expression of ideas, however controversial, in the classroom, and other campus-related activities.

It must be recognized, however, that this protection has its limits. College Policy and this Rule define those limits and conduct which is found to be "harassing" is not consistent with the College's commitment to academic freedom and free speech. No member of the College community may escape responsibility for engaging in harassing conduct as defined herein, merely by labeling the conduct as "speech" or other expressive activity.

B. Sexual Assault<sup>9</sup>: Forms

*i Non-Consensual Sexual Penetration (Rape)*

“Non-Consensual Sexual Penetration” is having or attempting to sexually penetrate another individual:

- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated and could not have provided consent.

*Sexual penetration* includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

*ii Non-Consensual Sexual Contact (Fondling)*

“Non-Consensual Sexual Contact” is having sexual contact with another individual:

- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated and could not have provided consent.

*Sexual Contact* includes intentional contact with the intimate parts of another, causing an individual to touch their own intimate body parts, or disrobing or exposure of another’s

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<sup>9</sup> Sexual assault defined under Texas Penal Code Section 22.011: “a person commits an offense if the person (1) intentionally or knowingly causes the penetration of the anus or sexual organ of another person by any means, without that person's consent; causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or causes 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; or (2) intentionally or knowingly causes the penetration of the anus or sexual organ of a child by any means; causes the penetration of the mouth of a child by the sexual organ of the actor; causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

A sexual assault is without the consent of the other person if: the actor compels the other person to submit or participate by the use of physical force or violence; 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; the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; 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; the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; 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; the actor compels the other person 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; the actor is a public servant who coerces the other person to submit or participate; or the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor. ‘Child’ means a person younger than 17 years of age. ‘Spouse’ means a person who is legally married to another.”

private parts without permission. Intimate body parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

Examples of behavior that would constitute non-consensual sexual penetration or contact include (but are not limited to) the following:

- Engaging in sexual activity with an unconscious or semi-conscious person;
- Engaging in sexual activity with someone who is asleep or passed out;
- Engaging in sexual activity with someone who has said “no”;
- Engaging in sexual activity with someone who is not reciprocating by body movement;
- Engaging in sexual activity with someone who is vomiting, unable to stand without assistance, or has to be carried to bed;
- Allowing another person to engage in sexual activity with your partner without his or her consent;
- Requiring any person to perform any sexual activity as a condition of acceptance into any organization affiliated with the College;
- Telling someone you will “out” them if they don’t engage in sexual activity (e.g., threatening to disclose the person’s sexual orientation without their consent);
- Having sexual contact or penetration with someone under the statutory age of consent;
- Telling someone you will fail them or give them a grade different from what they deserve if they don’t agree to engage in sexual activity; or
- Facilitating or assisting in a sexual assault including purchasing or providing alcohol or drugs to further a sexual assault.

***iii. Non-Forcible – Unlawful, non-f forcible sexual intercourse***

1. *Incest*<sup>10</sup> – Non-f forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
2. *Statutory Rape*<sup>11</sup> – Non-f forcible sexual intercourse with a person who is under the statutory age of consent.

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<sup>10</sup> Texas Penal Code Section 25.02 defines Prohibited Sexual Conduct as the following:

“(a) A person commits an offense if the person engages in sexual intercourse or deviate sexual intercourse with another person the actor knows to be, without regard to legitimacy:

- (1) the actor's ancestor or descendant by blood or adoption;
- (2) the actor's current or former stepchild or stepparent;
- (3) the actor's parent's brother or sister of the whole or half blood;
- (4) the actor's brother or sister of the whole or half blood or by adoption;
- (5) the children of the actor's brother or sister of the whole or half blood or by adoption; or
- (6) the son or daughter of the actor's aunt or uncle of the whole or half blood or by adoption.

(b) For purposes of this section:

- (1) “Deviate sexual intercourse” means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.
- (2) “Sexual intercourse” means any penetration of the female sex organ by the male sex organ.”

<sup>11</sup> See footnote 9 for definition of sexual assault under Texas Penal Code Section 22.011.

C. Sexual Exploitation

“Sexual Exploitation” occurs when an individual takes non-consensual or abusive sexual advantage of another for one’s own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of Sexual Exploitation include, but are not limited to:

- Prostituting another;
- Surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all Parties involved;
- Non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity of the person being exploited, or distribution of such without the knowledge and consent of all Parties involved or possession or distribution of any of the above when they depict a person under the age of 18 regardless of the Parties consent (possession or distribution of child pornography);
- Exposing one's genitals or inducing another to expose their own genitals in nonconsensual circumstances;
- Knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

D. Stalking<sup>12</sup>

“Stalking” occurs when a person engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

*A course of conduct* consists of two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third Parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property.

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<sup>12</sup> Definition of stalking under Texas Penal Code Section 42.072: “a person who, 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: (1) the person knows or reasonably believes the other person will regard as threatening including bodily injury or death for the other person, 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 fear that an offense will be committed against the other person’s property, and (2) 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 fear that an offense will be committed against the other person’s property, and (3) would cause a reasonable person to fear bodily injury or death for himself or herself, or 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, or fear that an offense will be committed against the person’s property. A fact finder may find that different types of conduct described above, if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.”

*Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.

*Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Cyber-stalking is a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of stalking include, but are not limited to:

- Non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on web sites, written letters, gifts, or any other communications that are undesired and/or place another person in fear;
- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person;
- Surveillance and other types of observation, whether by physical proximity or electronic means; and
- Gathering of information about a person from family, friends, co-workers, and/or classmates.

To qualify as stalking, the conduct is not required to be sexual in nature.

E. Intimate Partner Violence: Forms

“Intimate Partner Violence” includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, spousal, domestic, or other intimate relationship with the Respondent. The College will not tolerate Intimate Partner Violence of any form.

Intimate Partner Violence is often referred to as dating violence, domestic violence, or relationship violence. Intimate Partner Violence can encompass a broad range of behavior(s) including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate Partner Violence may take the form of threats, assault, property damage, violence or threat of violence to one’s self, one’s sexual or romantic partner, or to the family members or friends of the sexual or romantic partner. Intimate Partner Violence affects individuals of all sexes, sexual orientations, gender identities, and gender expressions, races and social and economic backgrounds.

*i Dating Violence*<sup>13</sup>

“Dating Violence” is physical acts of assault or threats of assault, detainment, or unwanted touching committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence. Whether there was such a relationship will be determined based on, among other factors, the Complainant’s and Respondent’s statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the Parties involved in the relationship.

*ii Domestic Violence*<sup>14</sup>

“Domestic Violence” involves physical acts of assault or threats of assault, detainment, or unwanted touching committed by: (1) a current or former spouse or intimate partner of the victim; (2) a person with whom the victim shares a child in common; (3) a person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner; (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Texas; or (5) any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws in the State of Texas.

F. Definitions of Key Terms; Other Considerations

To provide clarity to all individuals as to the kinds of behavior which constitute Sexual Misconduct, the College further defines key terms which the College will use in evaluating whether Prohibited Conduct has occurred.

*i Affirmative Consent*

“Affirmative Consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. Affirmative consent is required for any sexual activity to occur between two or more individuals. It is the responsibility of each person involved in the

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<sup>13</sup> Definition of dating violence under Texas Family Code Section 71.0021: “an act, other than a defensive measure to protect oneself, by an individual that is committed against a victim with whom the actor has or has had a dating relationship; or 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 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. ‘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 the length of the relationship; the nature of the relationship; and the frequency and type of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a ‘dating relationship.’”

<sup>14</sup> Definition of domestic violence under Texas Family Code Section 71.004: “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, or abuse by a member of a family or household toward a child of the family or household, or dating violence.”

sexual activity to ensure that the person has the affirmative consent of the other(s) to engage in the sexual activity.

It shall not be a valid excuse to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances: (a) The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent, or (b) the Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

The following are essential elements of affirmative consent:

- *Informed and reciprocal*: All Parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- *Freely and actively given*: Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.
- *Mutually understandable*: Communication regarding consent consists of mutually understandable words and/or actions that indicate a mutually unambiguous willingness to engage in sexual activity. Consent may not be inferred from silence, passivity, or lack of resistance. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.
- *Withdrawal of Consent*: Affirmative consent must be ongoing throughout the activity. Consent may be withdrawn by any Party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed "no" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain, or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately, and all Parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.
- *Not unlimited*: Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant. Even in the context of a current or previous intimate relationship, each Party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.
- *Age*: The State of Texas considers sexual intercourse with a person under the age of 17 to be unlawful. A person who engages in "unlawful" sexual intercourse, sexual contact, or indecency with a child as described in the Texas Penal Code does so without effective consent as defined by this Rule. Specifically, there is no effective consent under this Rule where one Party (the "minor") is under the age of seventeen,

and the other Party is more than three years older than the minor. Reports received that allege sexual intercourse, sexual contact, or sexual indecency with a person under the age of 17 will be reported to the City of Austin Police Department (or appropriate law enforcement agency if the act occurred outside of the City of Austin) as this conduct could constitute sexual abuse of children.

**ii. Force**

“Force” is the use or threat of physical violence to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by force is not valid.

For the use of force to be demonstrated, there is no requirement that a Complainant resist the sexual advance or request. However, evidence of resistance by the Complainant will be viewed as a clear demonstration of a lack of consent.

**iii. Intimidation**

“Intimidation” is the use of implied threats to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by intimidation is not valid.

**iv. Coercion**

“Coercion” is the improper use of pressure to compel another individual to initiate or continue sexual activity against that individual’s will. Consent obtained through coercion is not valid.

Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other Party does not engage in the sexual activity. When someone indicates, verbally or physically, that they do not want to engage in a particular sexual activity, that they want to stop a particular activity, or that they do not want to go past a certain point of sexual interaction, continued activity or pressure to continue beyond that point can be coercive. The College will evaluate the following in determining whether coercion was used: (a) the frequency of the application of pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (4) the duration of the pressure.

**v. Incapacitation**

“Incapacitation” is a state where an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand the “who, what, when, where, why, or how” of the sexual interaction) and/or is physically helpless. For example, an individual is incapacitated, and therefore unable to give consent, if the individual is asleep, unconscious, or otherwise unaware that sexual activity is occurring. An

individual will also be considered incapacitated if the person cannot understand the nature of the activity or communicate due to a mental or physical condition.

Incapacitation may result from the use of alcohol, drugs, or other medication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's: (1) decision-making ability; (2) awareness of consequences; (3) ability to make informed judgments; or (4) capacity to appreciate the nature and the quality of the act.

It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances: (a) the Complainant was asleep or unconscious; (b) the Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity; (c) the Complainant was unable to communicate due to a mental or physical condition.

Whether the Respondent reasonably should have known that the Complainant was incapacitated will be evaluated using an objective reasonable person standard. The fact that the Respondent was actually unaware of the Complainant's incapacity is irrelevant to this analysis, particularly where the Respondent's failure to appreciate the Complainant's incapacitation resulted from the Respondent's failure to take reasonable steps to determine the Complainant's incapacitation or where the Respondent's own incapacitation (from alcohol or drugs) caused the Respondent to misjudge the Complainant's incapacity.

It is the responsibility of each Party to be aware of the intoxication level of the other Party before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all Parties. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity.

Being intoxicated by drugs or alcohol is no defense to any violation of this Rule and does not diminish one's responsibility to obtain consent.

**vi. *Prohibited Relationships by Persons in Authority***

Sexual, romantic, or intimate relationships in which one party engages in a supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual, romantic, or intimate relationships between students and their professors, coaches, advisors, employers, supervisors, or other College employees.

Similarly, College employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual, romantic, or intimate relationship with an individual under the employee's supervision.

Faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach, or otherwise guide students should understand the fundamentally asymmetrical

nature of the relationship they have with students, employees (as applicable), or subordinates.

Sexual, romantic, or intimate relationships where there is a differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and employees. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach, or otherwise make decisions or recommendations as to the other person in connection with their employment or education at the College.

Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third-parties based on perceived or actual favoritism or special treatment based on the relationship.

Any evidence that demonstrates that a person in a position of authority over another, or in an evaluative role, is engaging in a sexual, romantic, or intimate relationship with someone whom they are teaching, mentoring, evaluating, supervising, counseling, advising, or the like shall be prima facie evidence of a violation of this Rule regardless of whether the conduct is or continues to be wanted or reciprocated.

Employees who may not have the requisite supervisory or evaluative role over students, but otherwise provide guidance or direct services to a student while serving in their professional capacity are prohibited from engaging in conduct that displays a sexual, romantic, or intimate relationship with a student they serve while working, regardless of whether the conduct is, or continues to be wanted or reciprocated. Conduct such as this may be addressed through this Rule in consultation with the appropriate supervisory personnel, as needed.

Evidence that such prohibited relationships occurred in the past will also be considered prima facie evidence of a violation of this Rule.

Alleged conduct that violates this section will be investigated under Guideline/Procedure 3.10.003.2 Sexual Misconduct Investigation Procedures.

***vii. Retaliation***

Retaliation for reporting Prohibited Conduct in good faith or cooperating with an investigation or disciplinary process related to this Rule is strictly prohibited.

Retaliation includes adverse action taken against a person for making a good faith complaint or report of Prohibited Conduct or participating in any proceeding under this Rule, including serving as a witness.

Adverse action includes conduct that threatens, intimidates, harasses, coerces or in any other way seeks to discourage a reasonable person from engaging in activity protected under this Rule.

Retaliation can be committed by or against any individual or group of individuals, not just a Respondent or Complainant. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of Prohibited Conduct.

The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting Prohibited Conduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

Any employee may pursue any charge of discrimination or harassment with the Texas Workforce Commission (“TWC”) or the federal Equal Opportunity Employment Commission (“EEOC”). It is unlawful to retaliate against any employee for opposing the practices prohibited by the State of Texas or comparable federal law or for filing a complaint with, or for otherwise participating in, an investigation, proceeding, or hearing conducted by the TWC or EEOC.

The Civil Rights Division of the TWC provides programs for current and former employees (or people who applied for employment) to file a complaint if they believe they have been discriminated against in an employment transaction. TWC accepts complaints if you believe the treatment you received from the employer was because of your race, color, national origin, age, religion, sex, disability, or because of retaliation for participating and/or filing another discrimination complaint and occurred within 180 days of the filing of the complaint.

Employees who believe they may have been discriminated against may get more information on filing a complaint through TWC by visiting:

<http://www.twc.state.tx.us/jobseekers/how-submit-employment-discrimination-complaint>

## VI. SANCTIONS AND REMEDIAL MEASURES

It is important to note that the sanctions and remedial measures outlined below only apply once a finding or determination of responsibility is made for violating this Rule as a result of following the applicable procedures outlined in the Guidelines/Procedures: Title IX Grievance Procedures, and Sexual Misconduct Investigation Procedures.

Different instances of a violation of the same College Policy or Rule rarely look exactly the same, and thus require detailed analysis and consideration when sanctioning. This analysis must include contemplation of certain case- specific circumstances that either make a violation more or less egregious than other instances of the same violation.

Additionally, prior violation(s) of this Rule will always be considered as aggravating factors that could potentially increase sanction(s) for a current Rule violation. The *number* of prior cases and the *egregiousness* of those past violations should be carefully considered, and prior violations for the same offense (e.g., employee or student currently being sanctioned for non-consensual sexual touching has a prior violation for the same offense) should be viewed as particularly exacerbating.

### *i. Range of Disciplinary Sanctions for Students*

**Written Warning** - Notice, in writing, that continuation or repetition of Prohibited Conduct may be cause for additional disciplinary action.

**Censure:** A written reprimand for violating this Rule. This conduct status specifies a period of time during which the student's good standing with the College may be in jeopardy. The student is officially warned that continuation or repetition of Prohibited Conduct may be cause for additional conduct action including probation, suspension, or expulsion from the College.

**Disciplinary Probation:** Exclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, elected or appointed offices, student research, clubs/student organizations, intramural sports and recreation, study abroad, and some student employment). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College Policy or Rule violations may result in further disciplinary action.

**Suspension:** Exclusion from College premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Conditions for readmission may be specified in the suspension notice.

**Expulsion:** Permanent termination of student status and exclusion from College premises, privileges, and activities.

**Restitution:** Repayment to the College or to an affected Party for damages (amount to be determined by the College) resulting from a violation of this Rule. To enforce this sanction, the College reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.

**Criminal Trespass Warning:** If appropriate, students may be prohibited from entering any ACC campus or property.

**No Contact Order:** If appropriate a permanent No Contact Order (not mutual) may be issued.

**Revocation of Admission and/or Degree/Certificate/Award:** Admission to, or a degree/certificate/award issued by, the College may be revoked for violating this Rule, or for other serious violations of any other College Policy found to be committed by a student during an investigation under this policy. If a student is ineligible to reenroll for a reason other than an academic or financial reason, the College District will include a notation on the student's transcript stating that the student is ineligible to reenroll for a reason other than an academic or financial reason.

**Withholding Degree/Certificate/Award:** The College may withhold awarding a degree/certificate/award otherwise earned until the completion of the process set forth in this Rule, including the completion of all sanctions imposed, if any.

**Other:** Other sanctions may be imposed instead of, or in addition to, those specified here. Sanctions may include remedial measures. Service, education, or research projects may also be assigned.

**Multiple Sanctions:** More than one of the sanctions listed above may be imposed for any single violation.

*ii. Range of Disciplinary Sanctions for Employees*

Possible sanctions for employees are outlined below in addition to possible discipline set forth in Administrative Rule (AR) 6.08.003 and the Guideline/Procedure for AR 6.08.003. A sanction resulting in a recommendation for termination of employment shall be made in accordance with applicable Board Policy and College policies and rules.

**Initial Warning:** Verbal warning when notice to employee regarding corrective actions is needed.

**Written Warning/ Reprimand:** Written notice to the employee when the problems and concerns addressed by the verbal warning have not met.

**Probation:** Probation is a period of time during which an employee's conduct will be observed and reviewed. The employee must demonstrate the ability to comply with College policies, rules, and/or standards and any other requirement stipulated for the probationary period.

**Suspension:** Suspension is a specific period of time in which the employee is suspended from their duties at the College, with or without pay.

**Termination:** Termination occurs when the employee is separated from the College and the employee's status is listed as not eligible for rehire.

**Criminal Trespass Warning:** If appropriate, employees may be prohibited from entering any ACC campus or property.

**No Contact Order:** If appropriate a permanent No Contact Order (not mutual) may be issued.

**Not Eligible for Rehire:** Upon termination from the College, an employee is made not eligible for rehire in their employment file.

**Removal from Adjunct Faculty Eligibility List:** An Adjunct Faculty member is removed from the Adjunct Faculty Eligibility List for a period of time up to indefinite removal.

**Other:** Other sanctions may be imposed instead of, or in addition to, those specified here. Sanctions may include remedial measures. Service, education or research projects may also be assigned.

**Multiple Sanctions:** More than one of the sanctions listed above may be imposed for any single violation.

*iii. The range for disciplinary sanctions for the following Prohibited Conduct, for students and employees as applicable, may include the following:*

- Sexual Harassment: Warning to expulsion/termination
- Sexual Assault: Suspension or expulsion/termination
- Stalking: Warning to expulsion/termination

- Dating Violence: Probation to expulsion/termination
- Domestic Violence: Probation to expulsion/termination
- Sexual Exploitation: Suspension to expulsion/termination
- Prohibited Relationships of Persons in Authority: Warning to termination

## **VII. RECORDS**

The Compliance Office will retain all records related to the investigation and resolution of reports of Prohibited Conduct for seven (7) years. Affirmative findings of responsibility are part of a student's conduct record and an employee's employment file. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a formal record. Discipline resulting in expulsion or suspension shall be maintained permanently in a student's record.

## **VIII. PREVENTION AND EDUCATION**

The College is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation and returning students and current employees receive ongoing training and related education. In conjunction with several other departments at the college and community organizations, the Office of Student Life provides bystander intervention programs and other educational opportunities related to preventing sexual violence at ACC.

## **IX. TRAINING**

The College provides annual training to all individuals who are involved in responding to, investigating, or resolving reports of Prohibited Conduct as required by the Clery Act as amended by the Violence Against Women Reauthorization Act of 2013 and Title IX regulations. If the College retains an individual outside the community to respond to, investigate, or resolve reports of Prohibited Conduct, the College requires the retained individual to have received adequate training consistent with the College's standards and as required by state and federal law.

The College provides training to students and employees to ensure they understand this Rule and the topics and issues related to maintaining an educational and employment environment free from all forms of Prohibited Conduct.