

STUDENT WELFARE
INVESTIGATING ALLEGATIONS
INAPPROPRIATE STUDENT PHOTOGRAPHS/VIDEOS

FNA, FFG, FFH, FFI, FO, FOC,
FOD, FOF, AND CQ
ADMINISTRATIVE REGULATION

This procedure should be considered alongside the Student Code of Conduct, the Student Handbook, and relevant Board Policy, including FNA, FFH, FFI, FFG, FO, FOC, FOD, and FOF.

INAPPROPRIATE
STUDENT
PICTURES

This regulation describes the District's procedure for reporting and investigating incidents of inappropriate student pictures. For the purpose of this regulation, the term "inappropriate picture" refers to pictures, videos, or other recorded visual images which depict: student nudity, students engaging in or depicting sexual conduct, or students involved in violations of law such as those listed in *Exhibit A*. The list in *Exhibit A* is not exhaustive, and administrators should consult with legal counsel as questions arise.

In this regulation, the term "picture" includes a photograph, video, or other recorded visual image. The term applies to hard copies and electronic copies of pictures, such as images sent by email, text message, instant messaging, and social media sites such as Twitter, Facebook, Snapchat, Instagram, Kik, etc.

Conduct which does not rise to the level of an inappropriate picture will be addressed in accordance with the Student Code of Conduct and Board Policy.

INITIAL REPORT

When a school employee receives a report alleging that a student sent or received an inappropriate picture, the employee should immediately notify the appropriate campus administrator and write a summary of the report. The employee does not need a copy of the picture to make the report.

PROMPT ACTION

Prompt action should be taken, even if the report is received on a weekend, holiday, or when school is out. If the employee receives the report after school hours, the employee should immediately call the appropriate campus administrator and SRO, and email a written summary of the report to the administrator and SRO. If the SRO is unavailable, the employee should make the report to the local police department's non-emergency number. If a person is in immediate danger, the employee should call 911.

WHAT SHOULD AN
EMPLOYEE DO
WITH THE
PICTURE?

If an employee has been given a copy of an inappropriate picture, the employee should not store it on the employee's phone, tablet, computer, personal devices, or school devices. The employee should not show the picture to anyone except the SRO and the investigating administrator. The employee should not forward the picture to any person or device, except as specifically instructed by the SRO. After making the report and giving the SRO an opportunity to view the picture and preserve evidence, the employee should immediately delete the picture from the employee's devices and school devices.

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	The employee should not ask a student for a copy of an inappropriate picture. If the picture is needed for the investigations discussed below, the police may obtain a copy through appropriate means.
RECEIPT OF REPORT	The campus administrator may receive a report of an inappropriate picture from a teacher, employee, parent, or student. When an administrator receives the report, the administrator should investigate the allegations and take appropriate action, as discussed below. The administrator should contact the Office of Student Services to seek counsel and direction throughout the District's investigation.
DISTRICT'S INVESTIGATION OF ALLEGATIONS	Administrators should consider whether the following have occurred in connection with the picture and perform investigations as required by Board Policies FFH and FFI: (1) violations of the Student Code of Conduct; (2) harassment; (3) discrimination; (4) dating violence; or (5) bullying. Even if criminal charges are not filed, these investigations may be required to ensure a safe school environment and to comply with law and policy. Questions to guide the District's investigation are provided in <i>Exhibit C</i>. If law enforcement is investigating criminal conduct in connection with the picture, District officials should confer with law enforcement to determine if the District's investigation would impede the criminal investigation. The District should proceed with its investigation to the extent that it does not impede any on-going criminal investigation. See Board Policy FFH (Local), p. 6. The District's investigation into allegations that a student sent or received inappropriate pictures may include: • interviews of witnesses; • written statements of all witnesses interviewed; • examination of the pictures, if offered by a witness and necessary for the investigation; • review of social media sites; • review of an Article 15.27 Notice or other information provided by law enforcement; and • other relevant evidence within the scope of the investigation.

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PICTURES AND
DISTRICT
INVESTIGATIONS

It is not necessary for school administrators to view inappropriate pictures in order to perform a diligent investigation for school purposes. Consequences for violations of the Student Code of Conduct may be imposed if the administrator forms a reasonable belief that the conduct has occurred. An administrator may have sufficient evidence to form this reasonable belief without viewing inappropriate pictures, as long as there is other credible evidence (such as witness statements) to support the allegations. Administrators and employees should not store nude or sexually explicit pictures of students or minors on their personal devices or school devices at any time.

SEARCH OF
STUDENT PHONES

Generally, an administrator should not search a student's cell phone or personal device without consent. If law enforcement or an SRO is involved with the investigation, it is more prudent to have the officer determine independently whether there is probable cause to search the device and allow the officer to perform the search, to the extent that law enforcement finds it necessary to do such a search.

HARRASSMENT,
DISCRIMINATION,
AND BULLYING

If prohibited harassment, discrimination, dating violence, or bullying relating to sex or gender is alleged or discovered, the administrator should immediately notify the District's Title IX Coordinator and coordinate the investigation and response with the Title IX Coordinator. In all cases of harassment, discrimination, and bullying, the administrator should investigate, document the findings, and take necessary steps to prevent future victimization, in compliance with Board Policies FFH (Legal) and (Local), and FFI (Legal) and (Local). These investigations may be done concurrently with the disciplinary investigation.

REPORTS OF CHILD
ABUSE

If an administrator or employee has cause to believe that a child's physical or mental health has been adversely affected by abuse or neglect by any person, that person must immediately make a report of child abuse or neglect to the Texas Department of Family and Protective Services or police, pursuant to Board Policy FFG (Legal), Texas Family Code §§ 261.101 and 261.103, and 19 Texas Administrative Code § 61.1051(a)(1).

SCHOOL DISCIPLINE

It may be appropriate to discipline a student for sending or sharing inappropriate photographs with classmates. To determine whether there is an appropriate disciplinary consequence for the conduct, the administrator should carefully review the Student Code of Conduct, Student Handbook, and Board Policy, including FO (Legal) and (Local), FOC (Legal) and (Local), and FOD (Legal) and (Local).

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STUDENT RIGHTS
TO FREE SPEECH

Students have free speech rights under the First Amendment, with some limitations at school, based on the special circumstances of the school environment. Administrators should consult with legal counsel before disciplining a student for off-campus speech, such as pictures, messages, and social media posts made and/or sent when the student is not at school or school activities. See Board Policy FNA (Legal).

SPECIAL
EDUCATION

If the student receives special education services, the ARD Committee may need to conduct a Manifestation Determination Review to ensure that a student is not disciplined for acts which are a manifestation of a disability, pursuant to Board Policy FOF (Legal).

EXTRACURRICULAR
ACTIVITIES

Certain extracurricular activities (such as athletics, cheerleading, student council, and National Honor Society) may have constitutions or codes of conduct that require a higher standard of conduct for their members than the general Student Code of Conduct. These policies may permit suspensions or discipline within the extracurricular activity for actions that reflect negatively on the school or the organization. It may be necessary to notify faculty sponsors of the findings of an investigation so appropriate action may be taken within the extracurricular activity.

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EXHIBIT A:
VIOLATIONS OF LAW
INVOLVING INAPPROPRIATE
STUDENT PICTURES

Possession or Promotion of Child Pornography

Texas Penal Code § 43.26(a)(1)

A person commits an offense if the person knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, including a child who engages in sexual conduct as a victim of human trafficking.

- “Sexual conduct” includes deviate sexual intercourse, sexual contact, and sexual intercourse. Tex. Penal Code § 43.01.

Electronic Transmission of Certain Visual Material Depicting Minor

Texas Penal Code § 43.261(b)

A person who is a minor commits an offense if the person intentionally or knowingly:

- (1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or
- (2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.

- “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above. Tex. Penal Code § 43.25(a)(5).

Invasive Visual Recording

Texas Penal Code § 21.15(b)

A person commits an offense if, without the other person's consent and with intent to invade the privacy of the other person, the person:

- (1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view;
- (2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another in a bathroom or changing room; or,

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- (3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

- "Intimate area" means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person. Tex. Penal Code § 21.15(a)(2).

Unlawful Disclosure of Promotion of Intimate Visual Material (Revenge Porn)

Texas Penal Code § 21.16(b)-(d)

- (b) A person commits an offense if:
 - (1) without the effective consent of the depicted person, the person intentionally discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;
 - (2) the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;
 - (3) the disclosure of the visual material causes harm to the depicted person; and
 - (4) the disclosure of the visual material reveals the identity of the depicted person in any manner, including through:
 - (A) any accompanying or subsequent information or material related to the visual material; or
 - (B) information or material provided by a third party in response to the disclosure of the visual material.
- (c) A person commits an offense if the person intentionally threatens to disclose, without the consent of the depicted person, visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct and the actor makes the threat to obtain a benefit:
 - (1) in return for not making the disclosure; or
 - (2) in connection with the threatened disclosure.
- (d) A person commits an offense if, knowing the character and content of the visual material, the person promotes visual material described by Subsection (b) on an Internet website or other forum for publication that is owned or operated by the person.

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Child Abuse

Texas Family Code § 261.001(1)(E)-(H), (K)

Abuse includes the following acts:

- sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children, indecency with a child, sexual assault, or aggravated sexual assault;
- failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- compelling or encouraging the child to engage in sexual conduct, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons, prostitution, or compelling prostitution;
- causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene or pornographic; or
- causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child.
 - “Sexual performance by a child” is “any performance or part thereof that includes sexual conduct by a child younger than 18 years of age.” Tex. Penal Code § 43.25

Neglect of a Child

Texas Family Code § 261.001(4)(A)(ii)(a), (d), (e)

“Neglect” includes:

- placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
- placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
- placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse committed against another child.

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Indecent Exposure

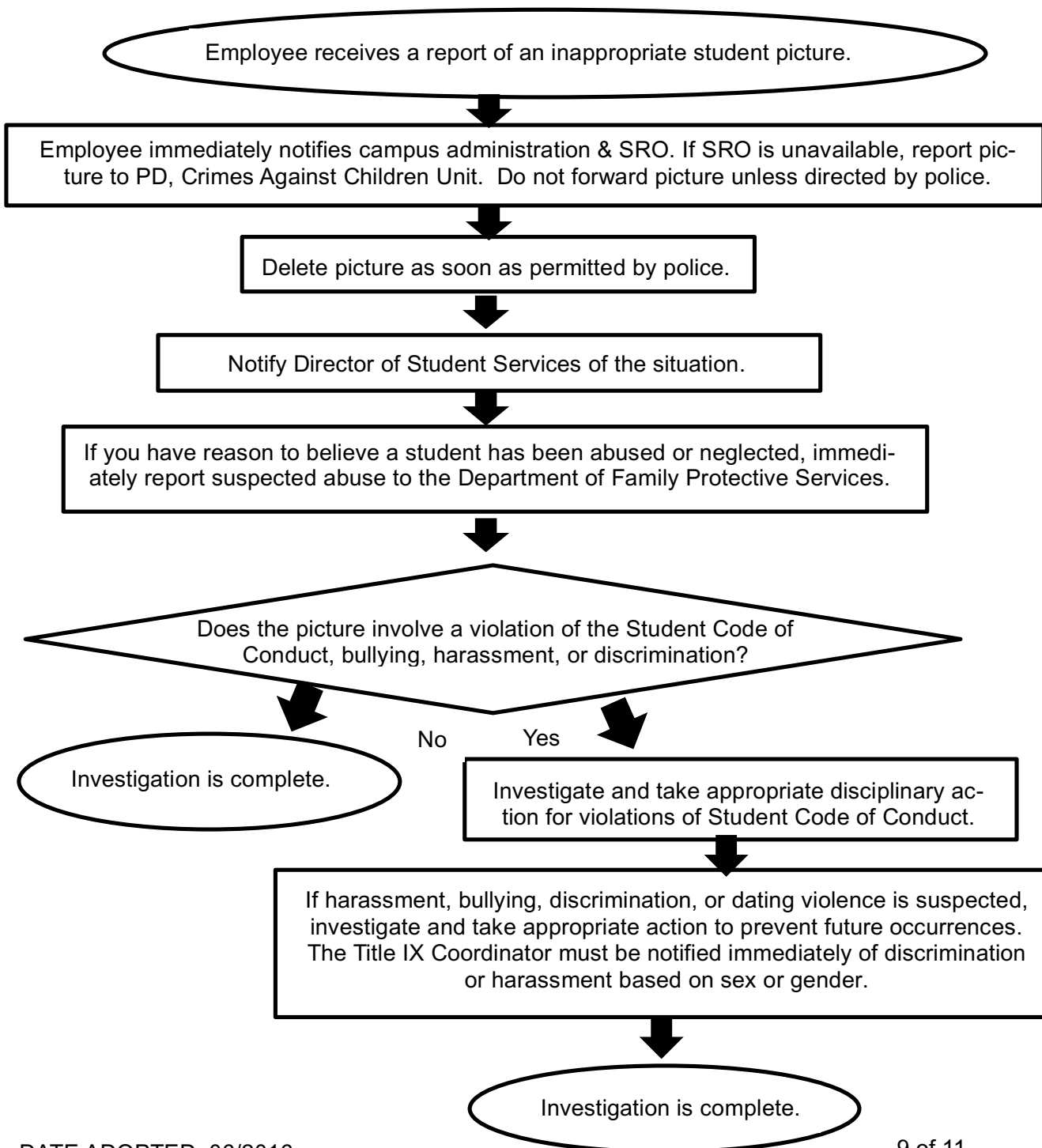
Texas Penal Code § 21.08(a)

A person commits an offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

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EXHIBIT B:
SUMMARY OF PROCEDURE
FOR INVESTIGATING INAPPRO-
PRIATE STUDENT PICTURES



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EXHIBIT C:
QUESTIONS TO GUIDE THE
DISTRICT'S INVESTIGATION

The District's investigator should consider the following questions:

- How old is the person in the picture (the "subject")?
- Did the subject consent to the picture being taken?
- Was the subject aware that the picture was being taken?
 - Did he or she pose for the picture?
 - Was the subject unaware that he or she was being photographed?
- What is going on in the picture?
 - What is the subject doing?
 - What is he or she wearing?
 - What is in the background?
 - Are other people pictured?
- Was the subject pressured to take the picture?
 - Whose idea was it to take the picture?
 - If the subject claims he or she was pressured, what was said or done to make the subject feel pressured or coerced?
 - How many times was the subject asked to take the picture?
 - Were any threats or promises made?
 - Was bullying or harassment involved?
- How was the picture sent? (text, email, social media app, etc.)
- Did the subject send the picture to someone with whom he or she is in a dating relationship?
 - If yes, how old is the boyfriend or girlfriend?
 - What is the age difference between the subject and the recipient?
- Did the subject consent to the picture being sent to anyone?
 - Was it intended to be a private picture between two people?
 - Was it intended to be shared with more than one person? If yes, who?
- Was the picture forwarded to other people, with or without the subject's consent?
- Was the picture taken at school or school activities?
- Was the picture viewed or sent to others at school or school activities?
- Did the picture result in any disruption of school or school activities?
- If the picture did not actually disrupt school activities, do school administrators reasonably forecast that the pictures

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will cause a material and substantial disruption to school or school activities?

- Do the students participate in extracurricular activities that have unique constitutions or codes of conduct?
- Have any violations of the Student Code of Conduct occurred?
- Have any violations of law and/or Board Policy occurred?
- Has any prohibited harassment occurred, including harassment on the basis of sex, gender, race, color, religion, national origin, disability, or any other prohibited basis?
- Has any prohibited discrimination occurred?
- Has dating violence occurred?
- Has bullying occurred?
- Are there any other circumstances present where a student's safety, welfare, or educational opportunities are adversely affected in connection with the picture?