Austin College
Sexual Misconduct and Discrimination Policy

This policy, dated August 14, 2020, supersedes any policies previously adopted and/or published in College handbooks, in the operational guide, or on the website.

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0.1 Introduction

Approved by SLT: 9/14/2020; 11/13/2020; 4/27/2021; 8/26/2021; 9/2/2025

Congress passed the Higher Education Amendments in 1972, and included within them was Title IX, which states: “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…” Since 1972, additional federal and Texas state laws and regulations have been adopted to offer further protection to those in higher education (i.e., students, employees, and third parties) from discrimination and harassment based on a person’s sex or gender. Austin College is committed to establishing an environment free of such discrimination and prohibits such acts. This policy has been updated to substantially comply with the Department of Education’s August 14, 2020 Title IX Regulations, and Texas laws H.B. 1735, S.B. 212, and H.B. 449.

Hence, Austin College (the College) will respond in a clearly reasonable way (as defined by Sections 106.44 and 106.45 of the New Title IX Regulations) to Reports and Formal Complaints containing information about actionable sex-and gender-based discrimination occurring in the College’s educational programs or activities in the United States, of which the Title IX Office is given Actual Notice of. These responses are intended to stop prohibited conduct, prevent its recurrence, and address any lingering impact on both participants and the campus community. Any retaliation against, or intimidation of those involved in a misconduct incident, be it those bringing a complaint, those accused, or those participating in the resolution process, is prohibited and will not be tolerated by the College.

Austin College supports persons involved in this process through available support services. The College encourages all parties in Austin College’s Community who wish to receive confidential support services regarding sex- and gender-based discrimination to seek assistance from the Title IX Coordinator, staff in counseling services or health services, the office of the College chaplain, the Grayson County Crisis Center, or to seek other medical attention. Additionally, employees needing support services may seek assistance from the Human Resource Department or the Employee Assistance Program. Nothing in this policy prohibits individuals from reporting crimes to Law Enforcement.

Questions regarding Title IX may also be referred to the United States Department of Education’s Office for Civil Rights, Dallas Office.
U.S. Department of Education 1999 Bryan Street, Suite 1620
Dallas, TX 75201
Telephone: 214-661-9600
FAX: 214-661-9687; TTD: 877-521-2172
Email: OCR.Dallas@ed.gov

0.2 Notice of Non-Discrimination

Austin College is committed to equal opportunity and does not discriminate on the basis of age, color, disability, national origin, race, religion, sex, gender, gender identity, sexual orientation, citizenship status, genetic information, status as a veteran, or any

other characteristic that is protected by applicable state or federal law in its operations, employment opportunities, educational programs, and related activities. The College applies this policy in a manner consistent with governing state and federal regulations. Austin College is committed to providing individuals with disabilities equal access to the process outline in this policy. If you need an accommodation in the process, please consult with the Title IX Coordinator.

The Chief Human Resource Officer has been designated by the College as the appropriate person with authority to redress allegations of non-sexual misconduct: discrimination, harassment, and retaliation. All reports or formal complaints must be made to the Chief Human Resource Officer in order for Austin College to have actual notice of the issue and respond in a clearly reasonable way.

Reports of discrimination, harassment, or retaliation must be made to the Chief Human Resource Officer:

Melanie Oelfke, 900 N. Grand Ave., Suite 6I Sherman, TX 75090.

Phone: 903.813.2433 and Email: moelfke@austincollege.edu

Reports may also be submitted to the Chief Human Resource Officer through the Campus Conduct Hotline (CCH) (866-943-5787), or the Online Campus Conduct Reporting tool, both of which are linked at the bottom of every Austin College webpage via “Campus Conduct Hotline.”

If a report is made to anyone else, the reporter risks the possibility that it will not come to the attention of the appropriate College authorities and may, therefore, not be acted upon officially by an Austin College employee with authority to redress the allegations.

Any person may make a report of discrimination, harassment, or retaliation to the Chief Human Resource Officer. Austin College will likely be limited in its response when reports are made by, or against, individuals that are not under Austin College’s control. All persons have the right to contact law enforcement or other resources outside of Austin College’s process.

Once reported to the Chief Human Resource Officer, the College may take any appropriate immediate action, as determined by the College, including Administrative Leave, Emergency Removal, and Supportive Measures.

0.3 Title IX (Federal) and Non-Title IX (Texas) Compliance

In May of 2020 the United States Department of Education issued new regulations that substantially updated how schools receiving federal funds must respond to allegations of Sexual Misconduct. These rules mandate specific definitions and formalize investigatory and adjudicatory processes which Austin College is required to implement by August 14, 2020. Several of the new Federal provisions either conflict with or go beyond the requirements imposed on Austin College by the Texas legislature.

The New Regulations address this conflict: *Section 106.45(b)(3)(i)* (“The Recipient must investigate the allegations in a formal complaint. If the conduct alleged by the complainant would not constitute sexual harassment as defined in § 106.30 even if

proved, did not occur in the Recipient's education program or activity, or did not occur against a person in the United States, then the Recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; **such a dismissal does not preclude action under another provision of the Recipient code of conduct.**")

Given this discretion, Austin College remains committed to responding to all allegations of sexual misconduct made by members of Austin College's community and has incorporated a Non-Title IX procedure into this Sexual Misconduct policy to address allegations that fall outside of Title IX.

If an allegation in a Formal Complaint of Sexual Misconduct is dismissed under the Title IX Process because it occurred outside of either the United States or Austin College's Educational Program or Activities, or it does not meet the Title IX Harassment definition, then the complainant may submit the Formal Complaint to the Non-Title IX process. All Formal Complaints alleging sexual misconduct must first go through the Title IX Process, before it goes through the Non-Title IX Process.

The State of Texas requires that Austin College's governing board approve its Sexual Misconduct policy. (H.B. 1735 Section 51.282(a)(2)) As compliance with both the Federal Regulations and the Texas Laws are non-negotiable, this sexual misconduct policy, which incorporates both Federal and State mandates, has been approved by Austin College's Governing Board for responding to Sexual Misconduct.

Date of Board Approval: Nov. 7, 2020

0.4 Record Keeping

1) *Austin College* must maintain for a period of seven years records of—

(A) Each sexual misconduct investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to Austin College's education program or activity;

(B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision- makers, and any person who facilitates an informal resolution process. Austin College must make these training materials publicly available on its website.

2) For each response required under Title IX, Austin College must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, Austin College must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Austin College's education program or activity. If Austin College does not provide a complainant with supportive measures, then Austin College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Austin College in the future from providing additional explanations or detailing additional measures taken.

0.5 Mandatory Training

1) All individuals designated by Austin College as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

2) Austin College ensures that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in this policy, the scope of the College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

3) Austin College ensures that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in this policy.

4) Austin College ensures that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

5) Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, do not rely on sex stereotypes and promote impartial investigations and adjudications of formal complaints of sexual harassment.

0.6 Requesting an Accommodation

Requests for accommodation (ADA, Section 504) should be made to the Title IX Coordinator. The Coordinator will work with the appropriate college authority to determine what reasonable accommodations may be provided.

Individuals that believe they need a translator or Language Assistance throughout the Title IX or Non-Title IX process may contact the Title IX Coordinator

0.7 Reasonably Prompt Time Frames

0.7(a) Investigation - The investigation of a Formal Complaint will be concluded within 90 business days of the filing of a Formal Complaint.

0.7(b) Grievance Process, including Appeal – The entire grievance process outlined in this policy, including any appeal, will generally be completed in no more than 165 business days. This time frame is subject to change.

0*.7(c) Appeal* – 21 Business days

0.8 Requesting an Extension of Time

Any party who wishes to request a temporary delay in the grievance procedure or the limited extension of time frames must submit a written request to the Title IX Coordinator that details why that party is requesting the delay/extension. The party filing the request must demonstrate good cause for the delay/extension to begranted.

The Title IX Coordinator will make a determination regarding the request for delay/extension. If the request is denied, the requesting party will receive notice of the decision and the reasons why the request was rejected. If the request is granted, both parties will receive written notice of the delay/extension and the reasons for it.

Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. **Delays caused solely by administrative needs, for example, would be insufficient to satisfy this standard.**

Even where good cause exists, Austin College may only delay the grievance process on a temporary basis for a limited time. A respondent (or other party, advisor, or witness) would not be able to indefinitely delay a Title IX proceeding by refusing to cooperate. The grievance process can proceed to conclusion even in the absence of a party or witness.

1.0 – Sexual Misconduct Policy

The Federal mandates established by Title IX and the Campus SaVE Act reaffirm that students, employees, and third parties have the right to be free from discrimination based on their gender, sex, sexual orientation, and gender appearance/expression. All procedures regarding such incidences can be found herein.

1.1(a) Scope of Title IX Policy

This policy applies to Austin College students, employees, and third-parties participating in Austin College's education program or activity as defined in 34 C.F.R. § 106.44(a): **Locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.**

1.1(b) Scope of Non-Title IX Policy

This policy applies to Austin College students, employees, and third parties both on and off campus, as well as in cyberspace. Off-campus coverage of this policy includes incidents that occur within the College's operations including incidents that occur outside the United States such as employee-led trips, study-abroad sites, internship sites, service- learning sites, college-owned properties and when the conduct substantially affects a person's education or employment with the College or poses a risk of harm to members of the Austin College community.

1.2 - Prohibited Misconduct Defined

Conduct that is prohibited and encompassed by this policy includes sexual harassment, sex and gender discrimination, sexual assault, rape, stalking, and relationship abuse (including domestic and dating violence). These acts are also a violation of federal and state law (including Title IX, Title VII, the Clery Act, the Campus SaVE Act, and the Violence Against Women Act). These acts are prohibited in any sex or gender configuration (i.e., between the same or differing genders), regardless of sex and gender identity, or in any power configuration. The College applies this policy in a manner consistent with governing state and federal regulations. Individuals found responsible for violating these policies will face sanctions that are commensurate with the severity of the policy violation, ranging from warning to expulsion or termination of employment.

Many of the behaviors outlined in this policy may be felony or misdemeanor crimes in addition to violations of this policy. Victims are encouraged to explore legal options for prosecution if they desire. Austin College will conduct its own investigation and resolution process for a Formal Complaint, regardless of whether the alleged misconduct is also being pursued through the criminal justice system. Acts of harassment or sex- and gender-based discrimination may vary in severity and include the following categories listed in sections 1.21 – 1.29.

Title IX Sexual Misconduct Policy Violation

1.21 Title IX Sexual Harassment

All allegations of prohibited misconduct defined under section 1.21 are subject to the resolutions processes articulated by the 2020 Title IX Regulations codified in this policy in sections 1.7 or 1.8(a).

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1.21.1 Quid Pro Quo, Sexual Harassment

Quid Pro Quo Harassment means an employee of the college conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

1.21.2 Davis Standard, Sexual Harassment

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 recipient's education program or activity.

1.21.3 Clery/VAWA Offenses, Sexual Harassment:

1.21.3(a) - Sexual Assault

Sexual assault is defined by the Clery Act as "an offense classified as a forcible or nonforcible sex offense" under the uniform crime reporting system of the FBI (See 20 U.S.C. § 1092(6)(A)(v)). Sexual assault means an offense that meets the definition of rape, criminal sexual contact, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program:

(A) "Rape" means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object, without the consent of the victim. This definition also includes instance in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

(B) "Criminal Sexual Contact" The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

(C) "Incest" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(D) "Statutory Rape" means sexual intercourse with a person who is under the statutory age of consent.

(Citation: 20 U.S.C. 1092(f)(6)(A)(v), Defined at 34 CFR 668.46)

Sexual assault can be committed by persons of the same sex as well as those of different sex.

Students, employees, and third parties should understand that forced or unwanted sexual intercourse or sexual contact (as defined above), whether it involves a stranger or an acquaintance, is sexual assault. The severity of the violation is the same whether the responding participant is a stranger or known to the reporting participant.

1.21.3(b) - Dating Violence

Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the consideration of: 1) length of the relationship, 2) the type of relationship, and 3) the frequency of interaction between the persons involved in the relationship.

1.21.3(c) - Domestic Violence

Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic of family violence laws of the jurisdiction receiving grant monies, or by any other person against the an adult or youth victim who is protected form that person’s act under the domestic or family violence laws of Texas. (Citation: 34 U.S.C. 12291(a)(8))

1.21.3(d) - Stalking

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. (Citation: 42 U.S.C. 12291(a)(30)) For guidance purposes regarding this definition:

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. (Citation: 34 CFR 668.46)

Stalking can occur between strangers, individuals who know each other, or individuals who are or were previously in a relationship. Stalking behaviors may include unwanted following or watching, unwelcome gifts, or communications in person, in writing, or through the use of technology. It also includes accessing personal information to monitor a person’s activity.

Non-Title IX Sexual Misconduct Policy Violations

Sections 1.22 – 1.29 define misconduct involving non-Title IX Sexual Harassment and violations of college policy that do not fall under the 2020 Title IX Regulations definition of Sexual Harassment. Allegations of these violations will be handled through the non-Title IX resolution process articulated in sections 1.7 or 1.8(b).

1.22 Non-Title IX Sexual Harassment

Non-Title IX Sexual Harassment means 1) unwelcome, sex based verbal or physical conduct that:

(a) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or

(b) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities of Austin College.

Examples of sexual of harassment may be: repeated unwelcomed sexual conduct or advances that may take the form of inappropriate sexual or suggestive comments, sounds or jokes; unsolicited touching that falls outside of the Sexual Assault definition.

1.23 Retaliation

1) No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.

2) Austin College will keep private the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.

3) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited.

4) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance under this part does not constitute retaliation prohibited, provided however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

1.24 Sexual Exploitation

Sexual exploitation occurs when a person takes non-consensual, unjust, or abusive sexual advantage of another for their own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. This behavior may fall under either the Title IX Non-Sexual Assault Sexual Harassment standard or the Non-Title IX Sexual Harassment standard. There are many degrees and types of sexual exploitation. Examples of sexual exploitation are described below.

- Photographing or taping someone (via audio or video) involved in sexual activity, or in a state of undress without their consent or knowledge constitutes prohibited sexual exploitation (even if a person consented to the sexual activity or the state of undress, photographing or taping someone without their knowledge goes beyond the boundaries of that consent).
- Disseminating photographs or video/audio of someone involved in sexual activity or in a state of undress without their knowledge or consent constitutes a separate and additional act prohibited by this policy.
- Voyeurism, which is the act of observing a person involved in sexual contact/activity or in a state of undress without their knowledge or consent, is prohibited by this policy.
- Inducing intoxication/incapacitation for the purpose of sexual activity (i.e., offering drugs, alcohol, or other substances to a person with or without their knowledge with the intent to impair their ability to withhold consent or their ability to knowingly consent to sexual activity) is a violation of this policy. This type of conduct constitutes sexual exploitation regardless of whether any sexual activity takes place.

1.25 Intentional Presentation of False Information

Participants in both the Title IX and Non-Title IX process must present, in good faith, truthful and accurate information to those involved in ensuring a fair process. Knowingly making false statements or presenting inaccurate information is unacceptable and may result in a separate disciplinary action regarding that conduct. Please note that filing a report or providing information which a participant or witness genuinely believes is accurate, but which is ultimately dismissed due to insufficient evidence or found to be untrue, does not constitute the intentional presentation of false information.

1.26 Violation of Supportive Measures

An employee or student’s failure to comply with the terms of Supportive Measures directives is a violation of Austin College policy.

1.27 Employee Failure to Report or False Report

It is a violation of Texas Law and Austin College policy for an employee who is required to make a report to not make a report to the Title IX Office. The State of Texas has determined that an employee commits an offense if: 1) they are required to make a report and knowingly fails to make a report; or 2) with the intent to harm or deceive, knowingly makes a report that is false. These offenses are classified as Class B Misdemeanors, which can be upgraded to a Class A Misdemeanor at trial. As is required by Texas Law, Austin College shall terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedure to have committed the offense of not making a report they knew of or making a false report.

1.28 Interference with Processes under this Policy

Any person who interferes with the Grievance Processes under this Policy is subject to disciplinary action up to and including dismissal or separation from the College. Interference with a Grievance Process may include, but is not limited to:

(1) Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;

(2) Removing, destroying, withholding, or altering documentation relevant to the Grievance Process; or

1.29 Employee – Student Relationships

Sexual, romantic, or dating relationships between employees and students are inconsistent with the mission of the College and inappropriate because they carry a risk of damaging the student's educational experience and the faculty or staff member's career. The College thus prohibits sexual, romantic, or dating relationships, even of a consensual nature, between employees and currently enrolled students. Enrolled students who are employed by College are considered students for consensual relationships.

There are exceptional circumstances in which the spouse or partner of a faculty or staff member is a student at the College. This policy does not apply in such circumstances. The Dean of the Faculty or the appropriate vice president is the administrative officer who determines whether a circumstance is exceptional.

1.3 - Process Definitions and Provisions

1.31 Academic Freedom

Austin College is committed to principles of free speech and upholding the tradition of academic freedom. This policy is not intended to restrict teaching methods or freedom

of expression, nor will it be permitted to do so. The proper exercise of academic freedom does not include harassment or discrimination as defined by this policy.

1.32 Administrative Leave

The Process by which Austin College places a non-student employee respondent on administrative leave during the pendency of a grievance process.

1.33 Confidentiality

Because breaches of confidentiality compromise the ability of Austin College to investigate and resolve claims of harassment and discrimination, the Title IX Coordinator will attempt to protect the confidentiality of harassment and discrimination proceedings to the extent reasonably possible. On campus, complete confidentiality cannot be guaranteed. Limited Confidentiality may be available when a concern is shared with a College-designated limited reporter employee (defined in Section 1.42.3) and when the concern does not involve a continuing threat of serious harm to self or others as determined by the Title IX Coordinator.

1.34 Consent

Consent is clear, active, and affirmative permission to act, either by words or actions. The person who initiates sexual activity is responsible for obtaining the other person's consent for that activity each and every time. The existence of a dating relationship, or prior intimate relationships, does not imply consent, and once consent has been given, it can be withdrawn at any time. Consent can never be assumed or implied. The absence of "no" or silence does not mean that consent has been given. Additionally, consent to one form of sexual activity does not imply consent to other forms of sexual activity.

1.34.1 - When Consent cannot be Obtained

Consent cannot be obtained when any of the following circumstances are used:

a) Physical violence, meaning that a person is exerting control over another person through the use of physical force. Examples of physical force include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

b) Threats, meaning words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

c) Intimidation, meaning an implied threat that menaces or causes reasonable fear in another person. A person's size alone does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g. blocking access to an exit).

d) Coercion, meaning the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes a clear decision not to participate in a particular form of sexual contact or sexual intercourse, a decision to stop, or a decision not to go beyond a certain interaction, continued pressure can be coercive. In evaluating whether coercion was used, the College will consider: (a) the frequency of the application of the pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (d) the duration of the pressure. Coercion includes continued pressure after an individual has made it clear that they do not want to engage in the behavior.

e) Consent is not present when an individual is incapacitated. An incapacitated individual is someone who cannot make rational, reasonable decisions because that person lacks the capacity to understand the "who, what, when, where, why, or how" of a sexual interaction. This includes a person whose incapacity results from a disability, sleep or lack thereof, involuntary physical restraint, unconsciousness, or use of alcohol or other drugs. Every individual may manifest signs of incapacitation differently; typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional distress, vomiting, or incontinence. The impact of alcohol and other drugs varies from person to person, and if there is any doubt as to the level or extent of the other person's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity. Being impaired by alcohol or other drugs is not a defense to any violation of this policy, including failure to obtain consent. In evaluating consent in cases of alleged incapacitation, the College seeks to determine 1) if the person initiating sexual activity knew that the other participant was incapacitated and 2) if not, would a reasonable person have known that the other participant was incapacitated. If the College determines that either of these statements are true, consent was absent.

f) Consent is never present if an individual is under the legal age of consent (17 in the State of Texas).

1.35 Emergency Removal

The Process by which Austin College may remove a respondent from the College's education program or activity on an emergency basis, provided that the Title IX Office undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

1.36 Parental Notification

Austin College retains discretion on a case-by-case basis in determining if, and when, it will be appropriate to contact a student's parent(s) or guardian(s). Students are

encouraged to inform their parent(s) or guardian(s) if they are involved in a Title IX action and should refer them to the Title IX Coordinator or their designee and this policy for questions.

1.37 Process Participants

1.37.1 - Title IX Coordinator

This individual is responsible for the oversight of this policy and the Enforcement of Supportive Measures and Sanctions.

1.37.2 - Reporting Participant

An individual who provides notice to the College that they have experienced one or more acts of sexual misconduct. If necessary, the College can assume the role of reporting participant.

1.37.3 - Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment or any of the violations defined in this policy.

1.37.4 - Respondent

Any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or any of the violations defined in this policy.

1.37.5 - Witness

The reporting and responding participants have the right to identify any individuals who may be witnesses to the conduct alleged in a formal complaint. Participants may provide an explanation the witness's relevance to this investigation at the time the witnesses are identified to the investigator(s). Participants should be aware that it is possible for both reporting and responding participants to list the same people as witnesses on their behalf. Witnesses are expected to cooperate and speak the truth. Witnesses should not be intimidated, threatened or improperly influenced in any way by either participant or through other individuals (e.g. friends, family members, attorneys, social media, etc..). The investigator(s) will attempt to interview any witnesses identified by the participants that the investigator(s) deems to be relevant to the resolution of the complaint. As members of Austin College's community, students and employees are expected to cooperate with and participate in the investigation process. Witnesses may also be a Party Advisor.

1.37.6 - Party Advisor

Each Complainant and Respondent in a sexual misconduct investigation is entitled to one Party Advisor of their choosing to perform cross examination at the Live Hearing and accompany and assist them throughout the campus resolution process. The Party Advisor can be a friend, family member, attorney, faculty member, witness, or any other

individual a participant selects who is willing, eligible, and available. Other than serving as a witness and conducting Cross Examination at the Live Hearing (in the Title IX Formal Resolution Process), a Party Advisor may not be otherwise involved in the process.

Participants are entitled to be accompanied by their party advisor in all meetings and interviews at which participants are requested to be present. The party advisor may help their participant prepare for each meeting. At a Title IX Formal Resolution Live Hearing the Party Advisor is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. If a party does not have an advisor present at the live hearing, Austin College will provide without fee or charge to that party, an advisor (not required to be an attorney) to conduct cross- examination on behalf of that party. Party Advisors may not answer questions for the party they are advising during an Investigation, Live Hearing, or other meeting. Party Advisors may not give the opening or closing for the party they are advising during the Live Hearing (Title IX Formal Resolution Process).

All party advisors are subject to the same campus rules, whether or not they are attorneys. Party advisors who step out of their role or otherwise violate this policy during the campus resolution process will be subject to removal as a party advisor.
The College expects the party advisors to adjust their schedules to allow them to attend College meetings, interviews, or other necessary events when scheduled. Accommodations for participation may be considered (e.g. phone, Skype).

Participants must inform the Title IX Coordinator of the identity of their party advisor. Participants and the party advisor must provide timely notice of a change in party advisors to the Title IX Coordinator. Prior to attending any interviews, the party advisor will be required to agree to confidentiality/non-retaliation, agreeing not to disclose or discuss anything relating to the formal report with anyone other than those authorized to see or hear such information under this process. A party's advisor may choose to withdraw from their role during the process for any reason. A party advisor must provide notice to the Title IX Coordinator when they withdraw from their role.

1.37.7 - Process Advisor

The College maintains a list of limited reporter employees who are trained to assist participants understand this policy and the resolution processes. These individuals are appointed by the College. They will report the incident to the Title IX Coordinator; however, they are not required to report personally identifiable information about the reporting or responding participants.

1.37.8 - Investigator

The Individual assigned by the Title IX Coordinator to investigate a Formal Complaint of Sexual Misconduct. These individuals will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The Title IX Office will ensure that all investigators receive training on the definition of sexual harassment in § 106.30, the scope of Austin College's education program or activity, how to conduct an investigation and grievance process including

hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Investigators have received training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Materials used to train these individuals do not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

1.37.9 - Decision Maker

The individual assigned by the Title IX Coordinator to ask relevant questions at the hearing and decide if cross examination questions are relevant at the live hearing, and to make determinations regarding responsibility. These individuals will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The Title IX Office will ensure that all decision makers receive training on the definition of sexual harassment in § 106.30, the scope of Austin College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The Title IX Office will ensure that decisionmakers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Materials used to train these individuals do not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

1.37.10 - Clerk

The individual assigned by the Title IX Coordinator to assist all participants in the Formal Resolution process with scheduling. This person may also enforce the decorum rule at the live hearing in a Formal Resolution.

1.37.11 – Support Person

All parties may have a support person accompany them to all interviews and meetings. Support Persons may also be a party's advisor. Support Persons are never allowed to answer for, or speak on behalf of the party they are supporting. Support Persons may confer quietly and briefly with the person they are supporting as needed in a meeting. The Support Person can be a friend, family member, attorney, faculty member, or any other individual a participant selects who is willing, eligible, and available. Support Persons may not otherwise be involved in the process.

All Support Persons are subject to the same campus rules, whether or not they are attorneys. Support Persons who step out of their role or otherwise violate this policy during the campus resolution process will be subject to removal as a Support Persons. The College expects the Support Persons to adjust their schedules to allow them to attend College meetings, interviews, or other necessary events when scheduled. The College does not typically change such scheduled meetings to accommodate a support person's ability to attend. Other accommodations for participation may be considered (e.g. phone, Skype).

Participants must inform the Title IX Coordinator of the identity of their Support Person. Participants and the support person must provide timely notice of a change in support person to the Title IX Coordinator. Prior to attending any interviews, the support person will be required to agree to confidentiality/non-retaliation, agreeing not to disclose or discuss anything relating to the formal report with anyone other than those authorized to see or hear such information under this process. A support person may choose to withdraw from their role during the process for any reason. A support person must provide notice to the Title IX Coordinator when they withdraw from their role. Support Persons that are not also serving as a Party Advisor will not receive evidence or the Investigative report for review.

1.38 Relevant Evidence

The Formal Resolution Process will provide an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. All credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

1) Relevant Evidence is defined as evidence:
   - Tending logically to prove or disprove a fact of consequence or to make the fact more or less probable and thereby aiding the trier of fact in making a decision.
   - Having a significant and demonstrable bearing on the matter at hand.
   - Affording evidence tending to prove or disprove the matter at issue or under discussion.

   “Relevant.” *Merriam-Webster.com Dictionary*, Merriam-Webster.

2) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

3) Legally Privileged information (Attorney/client, Dr./Patient) and legal/medical records are not relevant and may not be used or asked about unless voluntarily released by the party and relevant.

1.39 Student Amnesty

Students may be concerned about reporting sexual misconduct believing that their own behavior might subject them to disciplinary action (e.g., if a reporting participant or witness is underage and was using alcohol or drugs at the time of the incident). Witnesses and reporting participants should be assured that the focus in matters of sexual misconduct is always on the reported behavior, not on whether the witness or reporting participant was using alcohol or drugs at the time. Individuals are encouraged to come forward and report such conduct regardless of the surrounding circumstances.

In situations involving allegations of sexual misconduct, Austin College will seek to make the sexual misconduct allegation the primary focus of any investigation or disciplinary action. The College may not pursue disciplinary action against reporting participants, witnesses or a third party for disclosure of their own personal consumption of alcohol or drugs at or near the time of the incident provided that any such violation did not harm or place the health and safety of any other person at risk. It should be noted that the use of alcohol or drugs does not excuse sexual misconduct and a person who has been incapacitated through the use of alcohol or drugs (or by any other means) cannot give consent to sexual activity.

1.4 – Reporting Sexual Misconduct

Individuals may choose to seek action or assistance both on campus as well as through surrounding community resources. The following are examples of reasons that one might choose to report an incident of alleged misconduct to:

- To receive support in coping with an incident.
- To make Austin College aware of behavior in case it is part of a larger pattern.
- To help prevent similar incidents from happening in the future.
- To seek information about taking formal action against someone.
- To seek information about educating someone about their behavior through use of the College's Title IX process and procedures.

Reports should be filed with the Title IX Coordinator or Deputy Coordinator:

Title IX Coordinator
Melanie Oelfke
Director of Wellbeing and Human Resources
Administration Building, Room 211
900 N. Grand Ave., STE 6I
Sherman, TX 75090
Telephone: 903.813.2433
Email: **moelfke@austincollege.edu**

Deputy Title IX Coordinator
Liz Washington
Compliance Coord,
Administration Building, Rm 216
900 N. Grand Ave., STE 6I
Sherman, TX 75090
Telephone: 903.813.2432
lwashington@austincollege.edu

After a report of Sexual Misconduct has been filed with the Title IX Office, the Title IX Coordinator and/or Deputy Coordinator will:

1) Discuss the availability of supportive measures to the Reporting Participant,
2) Explain the process for filing of a Formal Complaint
3) Explain the Formal Resolution and Informal Resolution process.
4) Assess the nature and circumstances of the allegation;
5) Address any immediate concerns about the physical safety and emotional well-being of the participants;
6) Notify the reporting participant of the option to notify law enforcement;
7) Provide the reporting participant with information about the range of available on- and off-campus resources;
8) Describe the range of interim measures and remedies for security and support.

Once reported to the Title IX office, Supportive Measures are available as appropriate to the reporting party with or without the additional step of going through an Informal or Formal resolution.

A report is not a request for an investigation or adjudication, these are triggered by the filing of a Formal Complaint.

Reports to anyone other than the Title IX Coordinator and the Deputy Title IX Coordinator does not qualify Austin College as having Actual Knowledge of Sexual Misconduct. Submitting a Report of Sexual Misconduct does not guarantee any particular result.

1.41 Student and Alumni / Third-Party Reports

All Students and Third Parties wanting to make a report of sexual misconduct may do so in the following ways:

1) In person or through mail to the Title IX Coordinator, Melanie Oelfke, 900 N. Grand Ave., STE 6I Sherman, TX 75090.
2) Through email to the Title IX Coordinator, Moelfke@austincollege.edu
3) Over the phone to the Title IX Coordinator, 903-813-2433
4) Online non-anonymously through the Sexual Misconduct Communication Form, available on Austin College's Title IX webpage and through this link: Austin College Sexual Misconduct Communication Form

Online anonymously through this link: Campus Conduct Hotline

5) To a Limited Reporter Employee (Section 1.42.43), with the individual understanding that the employee must report at the minimum the type of harassment disclosed (the employee may give more information if students give permission to employee).
6) To a non-Limited Reporter Employee (Section 1.42.1), with the student understanding that the employee must report all information non-anonymously to the Title IX Coordinator.
7) To a Student Employee Resident Assistant and/or FSL with the student understanding that the Student Employee has the obligation to report all information non-anonymously to the Title IX Coordinator.

1.42 Employee Reports (All Faculty and Staff)

1.42.1 Non-Confidential Employees

Under Texas SB 212 all employees of Austin College who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX Coordinator, or Deputy Title IX Coordinator. That report must include all the information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.

1.42.2 Exceptions to the Employee Reporting Requirement

1) When the person is a victim of sexual harassment, sexual assault, dating violence, or stalking. (Employees are not required to report their own experiences)

2) When the disclosure was made at a public awareness event on sexual harassment, sexual assault, dating violence, or stalking, and the event was sponsored by Austin College, or by a student organization affiliated with Austin College.
3) Employees that are currently enrolled as students are not considered employees who have the obligation to make a report under TX SB 212.
4) Employees that are designated as Limited-Reporter Employees.

1.42.3 Limited Reporter Confidential Employees

These are Employees of Austin College who have been designated by the college as a person with whom students may speak confidentially concerning sexual misconduct covered under this policy, or who receives information regarding such an incident under the circumstances that renders an employee's communications confidential or privileged under other law shall. While required to make a report to the Title IX Coordinator, they must state only the type of incident reported and may not include information that would violate a student's expectation of privacy. The following employees and Process Advisors are designated as Limited Reporters:

Austin College Counselors	John Williams	Melissa Bressler
Counseling Services	**College Chaplain**	**Medical Professional**
Adams Center	Wynne Chapel	Adams Center
903.813.2247	903.813.2220	903.813.2247

1.43 Timing of Reports

There is no time limit for the submission of a report alleging sexual misconduct.

1.44 Reporting Sexual Abuse Regarding Minors

Employees of Austin College are required to report known sexual child abuse or neglect, and suspected sexual child abuse or neglect. To report to DFPS, call the 24-hour, toll-free abuse hotline at 1-800-252-5400 from anywhere in the United States to report abuse or neglect that happened in Texas.

1.5 - Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to Austin College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all

parties or the College's educational environment, or deter sexual harassment. Academic Supportive measures will be coordinated with and communicated to the faculty member(s) of record and the Academic (divisional) Dean or the Vice President for Academic Affairs. Supportive measures will be confirmed in writing.

Supportive measures may include:

- Counseling,
- Extensions of deadlines or other course-related adjustments,
- Modifications of work or class schedules,
- Campus escort services,
- Mutual restrictions on contact between the parties,
- Changes in work or housing locations,
- Leaves of absence,
- Honoring an order of protection or a no-contact order entered by a State civil or criminal court. Increased security and monitoring of certain areas of thecampus,
- Other similar measures.

The Title IX Office will maintain as private any supportive measures provided to the complainant or respondent, to the extent that maintaining such privacy would not impair the ability of the College to provide the supportive measures.

An employee or student's failure to comply with the terms of interim measure directives is a separate violation of Austin College policy.

The availability of Supportive Measures and/or action taken by Austin College may be limited in instances where reports are made by individuals that are not participating in or attempting to participate Austin College's educational program or activity.

1.6 - Formal Complaint

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator (in a Coordinator Initiated Complaint) alleging sexual misconduct against a respondent and requesting that Austin College investigate the allegation of sexual harassment. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in Section 1.41 of this policy.

1.6(a) – Formal Complaint Requirements

1) A Formal Complaint may only be submitted by the individual who is alleged to be the victim of conduct that could constitute sexual harassment or any of the violations defined in this policy

2) At the time of filing a Title IX or Non-Title IX formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of Austin College.

3) A Formal Complaint may not be filed anonymously. The Complainant cannot remain anonymous or prevent the complainant's identity from being disclosed to the respondent via the written notice of allegation.

4) The Formal Complaint should contain all known details about the allegations of misconduct including: date and time, location, parties, what happened, witnesses, and any other information relevant to the complaint.

Following the submission to the Title IX Coordinator or their designee of a signed Formal Complaint:
1) The Title IX Coordinator or their designee will review the formal complaint and determine what allegations, if any, must be dismissed or may be dismissed under section 1.62 of this policy. Any dismissal may be appealed by either party using the appeal process outlined in section 1.9 of this policy.
2) Any surviving allegations may then be resolved through either the Formal or Informal resolution process, as appropriate.
3) The Title IX Office will send out a Notice of Allegations of surviving allegations to all known parties.

1.61 Notice of Allegations

Upon receipt of a Title IX or Non-Title IX formal complaint and approval by the Title IX Coordinator as described below in 1.62, the Title IX Office will provide the following written notice to the parties who are known:

A) Notice of the College's Sexual Misconduct grievance process;
B) Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;
C) The written notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
D) The written notice will inform the parties that they may have a Party Advisor (1.37.6) of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
E) The Written notice will inform the parties that they may have a Support Person (1.37.11) of their choice.
F) The written notice will inform the parties of any provision in Austin College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process;
G) If, in the course of an investigation, the assigned Investigator decides to investigate allegations about the complainant or respondent that are not included in the initial notice, the Investigator will provide notice of the additional allegations to the parties whose identities are known;
H) The respondent will have a minimum of three calendar days to review the allegations and prepare a response before any initial interview.

1.62 Mandatory/Discretionary Dismissal and Consolidation of Formal Complaints

1.62.1(a) - Mandatory Dismissal of Title IX Formal Complaints

Upon receipt of a Title IX formal complaint, the Title IX Coordinator will review the listed information and make a determination regarding whether the Formal Complaint must be dismissed or may continue through the Title IX process. If the conduct alleged in the Title IX formal complaint: 1) would not constitute Prohibited Misconduct (as defined in this policy under section 1.2, excluding section 1.22) even if proved, 2) did not occur in Austin College's education program or activity (section 1.1(a)), 3) did not occur against a person in the United States, or 4) if the complaint was not filed by a named Complainant (or the Title IX Coordinator) participating in or attempting to participate in the college's education program or activity, then the Title IX Coordinator must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of Austin College's code of conduct if applicable. If there is more than one allegation of misconduct, the trained college designee will make a determination as to each allegation. If any or all allegations in a Formal Complaint are dismissed, all parties will receive notice of the decision and an explanation for the decision. The dismissal of a Formal Complaint may be appealed by either party.

1.62.1(b) – Mandatory Dismissal of Non-Title IX Formal Complaints

Upon the receipt of a Non-Title IX formal complaint, the Title IX Coordinator will review the listed information and make a determination regarding whether the Formal Complaint must be dismissed or may continue through the Non-Title IX process. If the conduct alleged in the Non-Title IX formal complaint: 1) would not constitute Prohibited Misconduct (as defined in this policy under section 1.2, excluding section 1.21.2) even if proved, 2) did not occur in Austin College's operations (section 1.1(b)), or 3) if the complaint was not filed by a named Complainant (or the Title IX Coordinator) participating in or attempting to participate in the college's education program oractivity, then the Title IX Coordinator will dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Texas Law and college policy; such a dismissal does not preclude action under another provision of Austin College's code of conduct if applicable. If there is more than one allegation of misconduct, the trained college designee will make a determination as to each allegation. If any or all allegations in a Formal Complaint are dismissed, all parties will receive notice of the decision and an explanation for the decision. The dismissal of a Formal Complaint may be appealed by either party.

1.62.2 - Discretionary Dismissal / Complaint Withdraw

Austin College's Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by Austin College; or specific circumstances prevent Austin College from gathering evidence sufficient to reach a determination as to the formal complaint or

allegations therein. If a Formal Complaint is dismissed both parties will receive notice of the decision and an explanation for the decision.

Specific Circumstances meriting discretionary dismissal are:

1. When no complainant is identified during the investigation.
2. When a formal complaint contains allegations that are precisely the same as allegations the recipient has already investigated and adjudicated.
3. When the length of time elapsed between an incident of alleged sexual harassment, and the filing of a formal complaint, prevent a recipient from collecting enough evidence to reach a determination.
4. When the complainant has stopped participating in the investigation but has not sent a written withdrawal request and the only inculpatory evidence available is the complainant's statement in the formal complaint or as recorded in an interview by the investigator.

1.62.3 - Consolidation of Complaints

The Title IX Coordinator may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

1.63 Timing of Formal Complaints

There is no time limit for the filing of a Formal Complaint. However, at the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the Austin College's education program or activity.

1.64 Title IX Coordinator Signs the Formal Complaint

The Title IX Coordinator has discretion to sign a formal complaint. The following are circumstances that the Title IX Coordinator will take into account when making the decision to sign a Formal Complaint: the complainant's wishes, whether a complainant's allegations involved violence, use of weapons, threats, serial predation, or similar factors.

1.65 "Participating in or Attempting to Participate in" Defined

Austin College only considers currently enrolled students and current employees to meet this definition.

1.7 - Informal Resolution Process

Where appropriate, the informal resolution process can be used to resolve allegations of sexual misconduct or interpersonal violence by taking immediate and corrective action to stop the conduct, address its effects, and prevent recurrence without implementing a formal resolution process. An informal resolution process may also

include a remedies- based process (mediation), which allows both participants to come to a mutual agreement regarding the resolution of the complaint. Informal resolutions may reach agreements between the parties, facilitated by the Title IX Coordinator or their designee, that include continued supportive measures but that also could include disciplinary measures, while providing finality for both parties in terms of resolving allegations raised in a formal complaint of sexual harassment.

The Informal Resolution Process may not be used to resolve a Formal Complaint alleging that an employee sexually harassed (1.21) a student.

The informal resolution process may include the range of Supportive measures described above, as well as targeted or broad-based training and educational programming for relevant individuals and groups or any other remedy that will achieve the goals of the College's policy. This process is facilitated by the Title IX Coordinator or their designee. For example, both participants may agree that the permanent application of Supportive measures (e.g. no-contact order) may be sufficient to resolve the complaint. This option is available if the College determines that such a process would be appropriate, and all participants agree to participate.

To enter into the Informal Resolution Process, both parties must provide voluntary written consent after receiving and reviewing the Notice of Allegation, and rules regarding the Informal Resolution Process.

The participants in any informal resolution process will not be required to interact with each other directly. Instead, the Title IX Coordinator or designee will arrange for or facilitate a remedies-based process or other form of mediation between the involved participants who are in different rooms. Once an informal resolution process is complete, both participants will be notified simultaneously/ contemporaneously (to the greatest extent possible, and consistent with FERPA or other applicable law) of the resolution. Either party may withdraw from the Informal Resolution process at any time prior to signing the agreement. If the parties are unable to reach an Informal Resolution agreement, the informal process will end and the Formal Resolution process will begin again. The Title IX Coordinator will inform both parties when one party has withdrawn from the informal resolution. If the parties indicate they are not able to agree to the proposed Informal Resolution(s), the Title IX Coordinator will end the Informal process and notify parties that the Formal resolution process has been initiated.

1.71 Administrative Agreement

The Administrative Agreement is an available form of Informal Resolution where the responding participant may elect to accept responsibility for the alleged policy violation through an Administrative Agreement, bringing an end to the Informal Resolution Process. To execute an Administrative Agreement both parties must acknowledge the policy violation, accept the proposed sanction(s), and waive any opportunity for appeal.

At any time prior to the final Informal Resolution/Administrative Agreement either party may withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

Parties that wish to pursue the Administrative Agreement Informal Resolution must notify the Title IX Coordinator in writing of their desire to do so. After the Title IX Coordinator has received both parties written notice of desire to engage in the Administrative Agreement, the Title IX Coordinator will issue a draft Administrative Agreement which includes the acknowledgement of the policy violation, the proposed sanctions as determined by the Title IX Coordinator, and the waiver of appeal. If agreed to by both parties then the Resolution process will end, and the Title IX Coordinator will enforce the agreement.

1.8 – Formal Resolution Process

The formal resolution process includes a prompt, thorough, impartial, and fair investigation into and adjudications of the allegations. Throughout the formal resolution process, participants will be treated fairly and equitably. The Formal Resolution Process requires and will provide an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. All credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The Title IX Formal Resolution Process utilizes an Investigation by a trained investigator, and a Live Hearing with Cross Examination of the opposing party and all witnesses performed by the Party Advisor in front of a Decision Maker who is not the investigator. The Non-Title IX Formal Resolution Process utilizes a trained Investigator to prepare an Investigative Report, allows for party review and response to that Report, follow up interviews by the investigator, a decision regarding responsibility made by the Investigator, and sanctions/remedies issued by the Title IX Coordinator.

1.8(a) Title IX Formal Resolution Process

The Title IX Formal Resolution Process will follow these steps as articulated in 34 C.F.R. 106.45(5)-(7):

1) An investigation to gather all relevant evidence.
2) All evidence collected is compiled by investigator and sent to both parties and their advisor. The parties will have 10 days to review and respond to the evidence collected. All responses are sent to the investigator.
3) The evidence collected and party responses submitted within the allotted 10 days to that evidence are incorporated into the Investigative Report which will fairly summarize all relevant evidence.
4) The Investigative Report will be sent to the parties and their designated Party Advisor. The parties will have at least 10 days to review and respond to the Investigative Report before the Formal Resolution Live Hearing. The Title IX Coordinator will communicate the date, time, and location (or online meeting link) to the parties and their advisors.
5) The Live Hearing Decision Maker reviews the Investigative report before the Live Hearing.
6) A Live Hearing where the Decision Maker and both party advisors may ask any party and witness relevant cross examination questions as determined by this policy and enforced by the Decision Maker.
7) The Publication of a Determination Regarding Responsibility which includes the rational and an outline of any sanctions and/or remedies imposed by Austin College.

8) Applicable appeals process.

1.8(b) Non-Title IX Formal Resolution Process

1) An investigation to gather all relevant evidence.
2) Both parties and their advisors are emailed the evidence collected by the investigator and have 10 days to submit written responses to the Investigator.
3) The Investigator creates the Investigative Report out of collected evidence and responses. The Investigative Report will fairly summarize all relevantevidence.
4) Both parties and their advisors are emailed the Investigative Report by the investigator and have 10 days to submit written responses to the Investigator. 5) The Investigator conducts any necessary follow up interviews or discussions based on party responses to Investigative report.
6) The Investigator publishes a Determination Regarding Responsibility which includes the rational for each decision.
7) The Title IX Coordinator will, after reviewing the Investigative Report and consulting with the Investigator as needed, assign sanctions and/or remedies as they deem appropriate. 8) Applicable appeals process.

1.81 Investigation of Title IX and Non-Title IX Formal Complaints

The formal resolution process includes a prompt, thorough, impartial, and fair investigation into the allegations. Throughout the investigation and process, participants will be treated fairly and equitably. The Title IX Coordinator will assign an investigator(s) who has been trained in the investigation of, and other issues related to, sexual discrimination, sexual misconduct, and interpersonal violence. The investigator(s) shall not have a conflict of interest or bias for or against any participants involved in the potential policy violation. The investigator(s) will undertake an investigation for the purposes of creating an Investigative report that fairly summarizes evidence relevant to the allegations in the Formal Complaint.

1.81.1 Investigation Requirements:

1) It is the responsibility of the investigator(s) to gather the evidence relevant to the formal complaint and the facts raised in the participant’s statements, provided that the Investigator cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the Investigator obtains that party's voluntary, written consent to do so. Participants should make themselves available to the investigator(s) and can provide information they believe relevant to the investigators.

2) Both Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
3) The Title IX Office will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

4) The Investigator will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. Austin College will not limit either party's choice or presence of advisor in any meeting or grievance proceeding. Timely notice of a party's Change of Advisors must be made to the Title IX Office. During the Investigation, advisors may not advocate or present on behalf of the participant, they may only confer quietly with their participant as necessary, as long as it does not disrupt the investigation interview. This rule applies equally to both the complainant and the respondent.

5) The Title IX Office and/or the assigned investigator will provide to a party and their advisor whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all, investigative interviews, with sufficient time for the party to prepare to participate. Sufficient time for the purpose of an interview under this section is at least 3 days.

6) Parties may submit to the Investigator questions they would like asked of any known potential witnesses or parties.

1.81.2 – Compilation of Evidence sent to Parties for Review and Response

6) After all initial interviews are completed and relevant evidence has been collected, the Investigator will send that compilation of evidence to both parties and their advisors for review and response. This Compilation of Evidence contains the evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which Austin College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. **Parties will have 10 days to submit their responses to the investigator.**

1.81.3 – Investigative Report Created, Sent to Parties

7) The Investigator will take the evidence collected, and the parties' responses to the Compilation of Evidence sent to Parties to create the Investigative Report.

8) The Investigative Report will then be submitted electronically to both parties and their advisors**. Both parties will have ten days to review and respond to the Investigative Report. Parties must submit their responses to the Investigator.**

1.81.4 – Investigative Report Submitted to Decision Maker

9) After the allotted 10 days, the Investigative Report and the party responses to it will be sent to the Decision maker for review.

1.81.5 – Live Hearing Scheduled (Title IX Sexual Harassment Only)

10) The Title IX Office will communicate with both parties the time, location, and manner of Live Hearing, which will be held at least ten days after both parties are sent the Investigative Report.

1.85.6 – Submitting New Evidence

11) Parties and witnesses may submit new evidence to the Investigator that could affect the outcome of the matter if it was not reasonably known at the time of their interviews, within the 10 days allotted for review and response to the Investigative report under section 1.81.3(8). New Evidence submitted to the Investigator after the 10 days will not be received or discussed at the Live Hearing.

1.82 Live Hearing (Title IX Sexual Harassment Only)

1.82.1 – Hearing Order

The Live Hearing will proceed as follows:
1) Opening Statement by the Decision Maker, Complainant, and Respondent.
2) Examination of the Complainant by: Decision Maker, then Respondent Party Advisor
3) Examination of the Respondent by: Decision Maker, then Complainant Party Advisor
4) Examination of Witness One by: Decision maker, then Complainant Party Advisor, then Respondent Party Advisor. (Step 4 repeats until all witnesses have been examined.)
5) Either Party Advisor may request a brief re-cross of an opposing party or any witness.
6) Closing Statement by Complainant, then Respondent.

1.82.2 - Digital Hearing Request

At the request of either party, The Title IX Office must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answering questions.

1.82.3 - Cross Examination

At the live hearing, the decision-maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

1.82.4 - Party Advisors

Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If a party does not have an advisor present at the live hearing, Austin College must provide without fee or charge to that party, an advisor of Austin College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

1.82.5 - Decision Maker Determines Relevant Evidence Procedure

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. This determination will be made in real time; cross exam questions may not be approved as relevant or not relevant before the hearing. When the Party Advisor objects to the Decision Makers ruling on Relevance, they may make a brief statement to the Decision Maker as to why the question is relevant and doesn't call for privileged information or non-relevant sexual behavior. The Decision Maker will either allow the question or rule it as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Questions Procedure. Advisors will ask questions under the following procedure:

- The party advisor will ask a question of the applicable participant.
- Before the participant answers a question, the Decision Maker will rule as to whether the advisor's question is relevant to the alleged conduct charges in one of three ways: 1) Relevant, 2) Not relevant, the questions asks about a detail that does not tend to prove or disprove the matter at issue or under discussion, or 3) Not relevant, calls for prior sexual behavior information without meeting one of two exceptions.
- If the Party Advisor asking the question objects to the Decision Makers ruling and/or explanation of the question as not relevant, the Party Advisor may offer a brief statement as to why it is relevant. If this is done the Decision Maker will consider the statement, and make a ruling one way or the other.
- If the hearing officer allows the question as relevant, the participant will answer it.

1.82.6 - Failure of a Party or Witness to Submit to Cross Examination

A decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process.

For example, a decision-maker at a postsecondary institution may now consider statements made by the parties and witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged sexual harassment, and statements about the alleged sexual harassment that satisfy the regulation's relevance rules, regardless of whether the parties or witnesses submit to cross-examination at the live hearing. A decision-maker at

a postsecondary institution may also consider, when relevant, police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if those documents contain statements of a party or witness who is not cross-examined at the live hearing.

1.82.7 - Rules of Decorum

During the Live Hearing, the Clerk and/or Decision Maker(s) will enforce rules of decorum. Parties and their Advisors are forbidden from badgering the other party or any witness. Badgering includes yelling at, harassing, or asking the same irrelevant question multiple times. The Clerk will notify the party or their advisor when they are badgering the witness and will ask the party or advisor to conform their question asking to an appropriate, non-badgering manner. All communication by all participants toward any other participant must be done respectfully.

1.82.8 – Review of Exhibits

During the Live Hearing, Party Advisors may show relevant videos, pictures, and documents that were included in the Investigative Report and are ruled relevant by the Decision Maker. During their allotted time to examine the applicable participant, the Party Advisor will tell the Decision Maker which exhibit they plan on asking relevant questions about, and then the question procedure listed under section 1.82.5 of this policy will be followed.

1.82.9 – No New Evidence may be introduced at Live Hearing

Evidence that was not included in the Investigative Report may not be introduced at the Live Hearing. Both parties have the equal right to appeal the Determination regarding responsibility based on the availability of newly discovered evidence that may affect the outcome of the matter.

1.82.10 – Reasonable Time Limit on Hearing / Break

The Live Hearing will have a reasonable time limit determined by the Decision Maker. The Decision Maker may grant short breaks on their own, or as requested by the parties.

1.83 Determination Regarding Responsibility

1) The decision-maker, who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the Decision-maker will apply the preponderance of the evidence standard of evidence. Preponderance of the evidence means more likely than not. This standard is used in all Title IX and Non-Title IX Sexual Misconduct cases.

2) The written determination must include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in this policy.

(B) A description of the procedural steps taken from the Title IX Office of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
(C) Findings of fact supporting the determination;
(D) Conclusions regarding the application of Austin College's Sexual Misconduct policy to the facts;
(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Austin College imposes on the respondent, and whether remedies designed to restore or preserve equal access to Austin College's education program or activity will be provided by the
Title IX Office to the complainant; and
(F) Austin College's procedures and permissible bases for the complainant and respondent to appeal. (Described below)
(G) The Title IX Office must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that Title IX Office provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
(H) The Title IX Coordinator is responsible for effective implementation of any remedies.

1.84 Sanctions

If a participant is found in violation of a college policy, sanctions will be determined by the Decision Maker(s) in a Title IX process OR the Investigator and Title IX Coordinator in the Non-Title IX process based on a number of considerations. Such considerations may include: severity, persistence, or pervasiveness of the policy violation; nature of the policy violation, including whether the policy violation included violence; impact on the reporting participant; impact on the responding participant; impact or implications of the policy violation on the larger Austin College community; prior misconduct by the responding participant, including the responding participant's relevant prior disciplinary history at the College; whether the responding participant accepts responsibility for the policy violation; maintenance of a safe, nondiscriminatory, and respectful environment conducive to learning; and any other mitigating, aggravating, or compelling factors. Possible sanctions include one or more of the following:

- Expulsion,
- Suspension,
- Probation,
- Educational Sanctions,
- Revocation or withholding of admission or degree pending completion of other sanctions,
- No Contact Orders,
- Time and place restrictions or bans,
- Housing restrictions,
- Extension of requirements used as supportive measures,
- Community Service

- Loss of Privileges,
- Notation in permanent record,
- Sanctions withheld, such as additional sanctions if deadlines for sanctions are not met Restorative justice requirement
- Specific sanctions that must be met before resuming status at Austin College
- Referrals for assessment, such as counseling or medical assessment
- Written warning or reprimand
- Oral warning or reprimand
- Termination of employment
- Other sanctions deemed appropriate by the Title IX Coordinator or designee.

1.84.1 Student Withdrawal or Graduation Pending Disciplinary Charges

If a student is ineligible to reenroll at Austin College for a reason other than an academic or financial reason, Austin College will include on that student's transcript a notation stating that the student is ineligible to reenroll for a reason other than an academic or financial reason.

If a student withdrawals or graduates from Austin College pending disciplinary charges that may result in the student becoming ineligible to reenroll in the college, the college will not end the disciplinary process until there is a final determination of responsibility. If, as a result of the process, the student is ineligible to reenroll at Austin College for a not academic or financial reason, a notation stating such will be placed on that student's transcript.

The Transcript Notation may be removed if: 1) the student becomes eligible to reenroll in the college, or 2) the college determines that good cause exists to remove the notation.

1.9 - Appeals

Once written notification of 1) the dismissal of a Formal Complaint or any allegations therein OR 2) the determination regarding responsibility has been issued, both parties have the right to submit an appeal.

1.91 Grounds for Appeal

Appeals may be submitted solely upon the following four grounds:

1) Procedural Irregularity

Procedural Irregularity that affected the outcome of the matter;

2) New Evidence

New Evidence that was not reasonably available at the time the Investigative Report was published or dismissal was made, that could affect the outcome of the matter; and

3) Conflict of Interest/Bias
The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of Interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

4) Sanction is Disproportionate to the Violation

1.92 Appeal Process

1) Appeals must be submitted in writing to the Title IX Coordinator within 7 days of the participants receiving either the Dismissal of a Formal Complaint or any allegations therein, or the Decision Regarding Responsibility.

2) Any information that is submitted will be made available to the other participant for review. The other participant may submit a rebuttal of the appeal in writing to the Title IX Coordinator within 7 days of receiving the appeal information.

3) Upon receiving an appeal and rebuttal, if one is submitted, the Title IX Coordinator will refer it to the appropriate appeal agent for review and final decision making.

- Appeals addressing procedural Irregularities in the investigation and resolution process in a way that substantially altered the outcomes of the case shall be referred to an alternate investigator(s) and or decision maker(s) for review and decision making.

- Appeals providing substantive new evidence, which is information that was not reasonably available before the publication of the Investigative Report or dismissal was made and that could affect the outcome of the matter shall be referred to an alternate investigator(s) and or decision maker(s) for consideration and determination of a finding based on the new information.
- Appeals alleging a Conflict of Interest/Bias by the Title IX Coordinator, Investigator, or decision maker for or against complainants or respondent generally, or the individual complainant or respondent, that affected the outcome of the matter shall be referred to an alternate investigator(s) and or decision maker(s) for review and decision making.
- Appeals alleging that the sanction is disproportionate to the violation shall be assigned to the following appellate agents for review and decision making:

  a) The Faculty Hearing Committee or designee if the responding participant is a faculty member,
  b) The Vice President for Business Affairs or designee if the responding participant is a staff member,
  c) The Vice President for Student Affairs or designee if the responding participant is a student, or

d) An appropriate appeals agent as determined by the Title IX Coordinator if the responding participant is not a member of the groups listed above.

4) The College will seek to complete the appeals process within 21 business days unless the College determines in its discretion that more time is required, in which case the participants will be notified of the need for an extension of the 21-day period. The College will provide periodic updates as it deems appropriate.

5) The appropriate appeals agent will issue a written decision describing the result of the appeal and the rationale for the result. The Title IX Coordinator or designee will notify the participants simultaneously, to the extent possible, in writing of the appeal agent's decision.

6) Finding and sanction decisions made by appeal agent are final.

2.0 – Updates to this Policy

Austin College reserves the right to modify this policy at any time, with or without notice.

2.1 Discrimination and Harassment based on Pregnant and Parenting Status

Austin College prohibits discrimination and harassment against students based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

Students may report discrimination and harassment and seek both academic and non-academic accommodations based on their pregnant or parenting status by contacting the Title IX Coordinator. Students seeking academic accommodations should review their class syllabus (class schedule, project due dates, exam dates) and plan appropriate accommodations in advance with the Title IX Coordinator and their professors. Students seeking to miss regularly scheduled classes or alter assignment due dates based on required medical appointments are encouraged to contact the Title IX Office as soon as possible. Accommodations for pregnant and parenting students will be treated the same as a temporary disability, meaning students may have to provide a doctor's note that explains why a certain accommodation is medically necessary.

Accommodations for pregnant or parenting students may be: a larger desk, frequent trips to the bathroom during class, eating and drinking in class, rides around campus, change in assignment due dates, excused absences, or other appropriate measures as determined by a doctor and Austin College.

End of Policy