



## Sexual Misconduct Including Title IX Grievance Policy Policy # 4.1.3

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### 1.0 **PURPOSE**

It is the policy of Texas Chiropractic College (TCC) to provide an academic and working environment free from Sexual Misconduct. Sexual Misconduct under this Policy encompasses (1) "Title IX Sexual Harassment" and (2) "Other Sexual Misconduct" as defined in Section 3 below. This Policy provides the process by which TCC manages and responds to non-criminal reports and complaints of Sexual Misconduct, including the process by which TCC will promptly, fairly, and impartially investigate and adjudicate allegations and complaints, including allegations and complaints arising under Title IX of the Education Amendments of 1972.

### 2.0 **SCOPE**

TCC prohibits any student, employee, or third party from perpetrating Sexual Misconduct against any TCC student, employee, or third party in TCC's education programs and activities. The definition of third party encompasses visitors to campus and vendors who contractually are involved in providing services to TCC in support of TCC's education programs and activities.

Conduct violates TCC's Sexual Misconduct Policy if it occurs on property owned or leased by TCC or within an education program or activity of TCC, including off-campus programs and activities that are sponsored or controlled by TCC. The policy also applies to off-campus conduct that adversely interferes with a person's ability to participate in or benefit from TCC's education programs and activities; such conduct violates this Policy if it is objectively offensive to a reasonable person and the affected individual actually perceived the conduct as harassing or abusive.

Information regarding this policy, resources, and contact information for TCC's Title IX Coordinator is available on the TCC Title IX web page at <https://www.txchiro.edu/title-ix/>.

### 3.0 **DEFINITIONS**

The following definitions apply to this Policy.

**Complainant:** An individual who is alleged to have been subjected to conduct that could constitute "Title IX Sexual Harassment" or "Other Sexual Misconduct" as those terms are defined under this Policy. In the absence of a Formal Complaint, the individual also may be referred to as the alleged victim.

**Consent:** A clear, knowing, and voluntary permission by words or action to engage in mutually agreed upon sexual activity. Consent is communicated through mutually understandable words or actions that indicate willingness by the parties involved to engage in the same sexual activity, at the same time, and in the same way. A current or previous dating or sexual relationship by itself is not sufficient to establish consent on a specific occasion. Ideally, consent is given verbally; however, consent (or lack of consent) also may be expressed through gestures and body language. Consent can be withdrawn at any time.

Consent is not effective if it results from the use of physical force or restraint, a threat of physical force, acts of intimidation, acts of coercion, or incapacitation (including through the voluntary or involuntary

ingestion of alcohol or controlled substances). Consent also is not effective if other evidence shows that the individual's ability to exercise their own free will was eliminated on the occasion in question.

Specific examples of those who cannot give consent include:

- The individual is under the age of 17 and is not the spouse of the alleged offender;
- The individual has not consented to the sexual act with the alleged offender and the alleged offender knows the other person is unaware that the sexual act is occurring;
- The individual is unconscious, asleep, or incapacitated. Incapacitation is the inability, temporarily or permanently, to give consent because the individual, either voluntarily or involuntarily, is mentally and/or physically helpless, disoriented, or otherwise incapable of understanding or controlling what is happening. Incapacitation could be caused by physical restraint or by the ingestion of substances. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When medication or drugs are involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Determining whether an individual is incapacitated will require an individualized determination of the individual's state, conduct, speech, and other indicators relevant under the circumstances. TCC will consider whether a sober, reasonable person in the same or similar circumstances knew or should have known that the other party was incapacitated.
- The individual is mentally impaired or has a mental disability; or
- The alleged offender has misrepresented or concealed the alleged offender's true identity to the individual.

**Dating Violence:** Violence committed by the actor against a person with whom the alleged offender is or has been in a social relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between persons involved in the relationship. Dating violence includes but is not limited to sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of "domestic violence."

**Domestic Violence:** An act of violence committed by a current or former spouse, a current or past intimate partner, a person with whom the victim shares a child, or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Texas. In Texas, a person commits domestic violence if he or she engages in violence against a family member, household member, or a current or past partner with whom the alleged perpetrator had a continuing relationship of a romantic or intimate nature.

**Education Program or Activity:** Places, programs, events, and circumstances over which TCC exercises substantial control over the alleged perpetrator and the context in which the Sexual Misconduct occurred. This includes any building owned or controlled by a student organization that is officially recognized by TCC, whether the building is on-campus or off-campus and whether it is leased or owned by TCC. This phrase also includes extracurricular activities sponsored or controlled by TCC, as well as activities, including off-campus clinical programs, that occur as part of TCC's instructional programs.

**Employee:** An individual employed by TCC part-time, full-time, or in temporary capacity as faculty, staff, or an administrator.

**Formal Complaint:** A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a respondent and requesting that TCC investigate the allegation(s) of Sexual Misconduct.

**Independent Hearing Officer:** An external and neutral consultant, typically an attorney with Title IX training, who has been appointed to serve as the decision-maker in the adjudication of certain Formal Complaints.

**Other Sexual Misconduct:** Sexual conduct that does not constitute “Title IX Sexual Harassment” but that is nonetheless inappropriate in an educational or work environment. “Other Sexual Misconduct” includes, but is not limited to, the following prohibited conduct:

- Unwelcome, sex-based verbal or physical conduct that: (1) in the employment context, unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment; or (2) in the education context, is sufficiently severe, persistent, or pervasive and interferes with a student’s ability to participate in or benefit from TCC’s educational programs or activities.
- Unwelcome sex-based advances or propositions; unwelcome requests for sexual favors; unwelcome physical contact or touching of a sexual nature; persistent and unwanted sexual attention; voyeurism; unwelcome sexual gestures; public exposure of one’s sexual organs; displaying obscene materials in a public place on campus; forwarding pornographic or obscene material via email or text to non-consenting recipients; allowing a third party to view consensual sex without the knowledge of the other participant;
- Recording or photographing without consent any of the following: a person engaging in sexual activity or undressing in a locker room or other area where there is a reasonable expectation of personal privacy; a person’s intimate body parts (genital area, breasts, buttocks, groin); another person while the person is using restroom facilities.
- Unwelcome comments of a sexual nature that a reasonable person would view as gratuitous, intimidating, offensive, and/or degrading and that adversely impacts an individual’s educational or work environment.
- Conduct of a sexual nature that is consensual between two or more parties but is nonetheless inappropriate in an educational environment, such as engaging in consensual sexual acts in a campus building or displaying sexually oriented objects or materials in the presence of third parties while on campus.
- Sexual or romantic relationships between employees and students are prohibited. (See also TCC Policy on Employee and Student Fraternization, Policy 3.2.4.)

**Parties:** The “Complainant” and the “Respondent” are the “parties” in a grievance process under this Policy.

**Retaliation:** Any adverse action (including disciplinary action, intimidation, threats, coercion, harassment, or discrimination) taken against someone for the purpose of interfering with any right or privilege secured by this Policy or related policy or law or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this Policy. For purposes of this Policy, “retaliation” also includes a conduct charge against

an individual that do not involve Sexual Misconduct but that arise out of the same facts or circumstances as a report or complaint of Sexual Misconduct when the purpose of the conduct charge is to interfere with a right or privilege secured by this Policy or related policy or law. The following acts do not constitute retaliation under this Policy:

- Investigating or imposing consequences against a party or witness for knowingly making false statements or knowingly submitting false information about a report, complaint, investigation, proceeding, or hearing under this Policy.
- Charging an individual with one or more code of conduct violations that do not involve Sexual Misconduct but that arise out of the same facts or circumstances as a report or complaint of Sexual Misconduct for a purpose that is not related to interfering with any right or privilege secured by this Policy.
- Petty slights and annoyances.

**Respondent:** An individual identified as the alleged perpetrator of Sexual Misconduct in a Formal Complaint. Before a Formal Complaint is filed, this person is referred to as the “alleged perpetrator” in this Policy.

**Sexual Assault:** Forcible and nonforcible sex offenses as defined under the uniform crime reporting system of the Federal Bureau of Investigation. Forcible sex offenses are any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and fondling. Nonforcible sex offenses include incest and statutory rape.

- “Rape” is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the victim’s consent.
- “Fondling” is the touching of the private body parts of another person for sexual gratification, without the victim’s consent, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- “Incest” is sexual intercourse between persons related to each other within the degrees wherein marriage is prohibited by law.
- “Statutory Rape” is sexual intercourse with a person under the statutory age of consent.

**Sexual Misconduct:** This umbrella term encompasses both “Title IX Sexual Harassment” and “Other Sexual Misconduct” as defined in this Policy.

**Stalking:** 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. For 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.

- “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the alleged victim.
- “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Student:** An individual who has accepted an offer of admission and is registered or enrolled in and paid for credit or non-credit bearing coursework. An applicant for admission who has not enrolled is not a “student” but may use these procedures if the applicant is subjected to Sexual Misconduct by a TCC student or employee in connection with the admissions process.

**Supportive Measures:** Non-disciplinary, non-punitive, individualized services offered without fee or charge to an alleged victim of Sexual Misconduct before, during, and after the filing of a Formal Complaint and even if no Formal Complaint has been filed. In addition, when a Formal Complaint has been filed, Supportive Measures also are available to a Respondent without fee or charge. Supportive Measures could include counseling, extensions of deadlines or other course-related adjustments, mutual restrictions on contact between the parties, changes in work, leaves of absence, increased monitoring of certain areas of the campus, and other similar measures. Under state law, alleged student victims and alleged student offenders may drop a course in which both parties are enrolled without academic penalty.

Supportive Measures are designed to restore or preserve the individual’s access to TCC’s education program or activity without unreasonably burdening the other party; protect the safety of all parties and the educational environment; and deter sexual harassment and other sexual misconduct. The Title IX Coordinator or designee will evaluate a party’s request for a particular supportive measure and determine feasibility and availability.

Measures that are punitive or disciplinary cannot be Supportive Measures and cannot be implemented until after the conclusion of a grievance process. Emergency Removals and Administrative Leaves, as discussed in this Policy, are not considered disciplinary, nor are they considered Supportive Measures.

**Title IX Sexual Harassment:** Conduct on the basis of sex in a TCC education program or activity that satisfies one or more of the following:

- a) *Qui pro quo harassment:* Harassment by an employee of TCC in which the employee conditions the provision of an aid, benefit, or service of TCC on an individual’s participation in unwelcome sexual conduct;
- b) “Sexual assault,” “dating violence,” “domestic violence,” or “stalking” as defined in this Policy;  
or
- c) *Hostile Environment Harassment:* Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to a TCC education program or activity

*Quid pro quo* harassment, sexual assault, dating violence, domestic violence, and stalking will not be evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access because such conduct is sufficiently serious to deprive a person of equal access. Therefore, any instance of *quid pro quo* sexual harassment, sexual assault, dating violence, domestic violence, or stalking constitutes “Title IX Sexual Harassment.”

#### **4.0 RETALIATION IS PROHIBITED**

TCC prohibits retaliation against TCC students, employees, and third parties who in good faith report or file a complaint of Sexual Misconduct or who have testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this Policy.

An individual who believes that they have been subjected to retaliation may file a complaint under Section 10 of this Policy.

#### **5.0 MANDATORY EMPLOYEE REPORTING**

Except in situations involving confidential employees under Section 5.2, any TCC employee who, in the course and scope of their employment, observes or receives information regarding an alleged incident that the employee reasonably believes constitutes Sexual Misconduct by or against a person who was a TCC student or employee at the time of the incident must promptly report the known information to TCC's Title IX Coordinator.

Employees also shall report alleged incidents that they reasonably believe constitute Sexual Misconduct by or against an individual who is attempting to participate in a TCC education program or activity.

When in doubt about whether an incident should be reported, employees are encouraged to err on the side of reporting to the Title IX Coordinator.

Employees who knowingly fail to make a mandatory report as stated above are subject to termination. Additionally, employees who fail to make a mandatory report of an incident of sexual harassment, sexual assault, dating violence, or stalking involving an employee or student are subject to criminal prosecution under state law.

##### **5.1 Reporting Process for Employees**

Employees may fulfill their mandatory reporting obligation by speaking with or emailing TCC's Title IX Coordinator at [titleix@txchiro.edu](mailto:titleix@txchiro.edu) or by submitting a report on-line at <https://txchiro.wufoo.com/forms/title-ix-complaint-form/>.

When making a report, the employee shall report all known information regarding the incident including, if available, the names of all known alleged victims and alleged perpetrators, a detailed description of the alleged conduct, and the date, time, location, and nature of the alleged incident. The employee shall notify the Title IX Coordinator if the alleged victim has requested confidentiality, but such a request does not relieve the employee from the responsibility to report known information about alleged Sexual Misconduct to the Title IX Coordinator.

Self-Reporting: Employees are not required to report alleged Sexual Misconduct incidents in which they were the victim.

##### **5.2 Limited Exceptions to Employee Mandatory Reporting**

Confidential Employees: Under Texas law, employees with a legal duty of confidentiality—such as a licensed professional counselor providing therapeutic services—will report to the Title IX

Coordinator only the type of incident reported (e.g., sexual assault or stalking). They are not required to provide names or other identifying details.

### **5.3 Other Reporting Obligations Not Affected**

An employee who makes a report under this Policy may have additional reporting obligations under other laws such as the Clery Act. Employees who are Campus Security Authorities (CSA) must report Clery-reportable offenses to TCC's Clery Act coordinator (Arthur Goudeau, Director of Financial Aid, available at [agoudeau@txchiro.edu](mailto:agoudeau@txchiro.edu) and 281-998-6022). In some instances, an employee will need to report the same incident to the Title IX Coordinator and the Clery Act coordinator.

## **6.0 OFFICIALS WITH AUTHORITY UNDER THIS POLICY**

Officials With Authority are those TCC employees who are vested with the authority to take corrective action when they obtain reports of allegations of Sexual Misconduct.

TCC's Title IX Coordinator and Deputy Title IX Coordinator coordinate TCC's response to reports of Sexual Misconduct and implement this Policy. The names of TCC's Title IX Coordinator and Deputy Title IX Coordinator and their contact information is available on TCC's website at <https://www.txchiro.edu/title-ix/>.

Although TCC encourages individuals to report Sexual Misconduct directly to a Title IX Coordinator, individuals also may make reports to the following employees who are designated as Officials with Authority:

- President, Dr. Sandra Hughes, [shughes@txchiro.edu](mailto:shughes@txchiro.edu)
- Director of Human Resources, Jill Stegall, [jstegall@txchiro.edu](mailto:jstegall@txchiro.edu)
- Chief Academic Officer, Dr. Michael Sheppard, [msheppard@txchiro.edu](mailto:msheppard@txchiro.edu)
- Chief of Clinics, Dr. Kent Gray, [kgray@txchiro.edu](mailto:kgray@txchiro.edu)

## **7.0 REPORTING SEXUAL MISCONDUCT TO TCC**

### **7.1 Reports by Students and Individuals Who Are Not Employees**

TCC encourages individuals to report Sexual Misconduct directly to TCC's Title IX Coordinator in person or by mail, telephone, TCC's Title IX web page (<https://www.txchiro.edu/title-ix/>), or electronic email using the contact information on TCC's website (<https://www.txchiro.edu/title-ix/>), via email to [titleIX@txchiro.edu](mailto:titleIX@txchiro.edu), or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. A report may be made at any time, including during non-business hours, using the telephone number or electronic mail address, or by mailing to the office address listed for the Title IX Coordinator.

For allegations of Sexual Misconduct against a Title IX Coordinator, the individual may make a report to TCC's President, Dr. Sandra Hughes, [shughes@txchiro.edu](mailto:shughes@txchiro.edu), 281-998-6041.

For allegations of Sexual Misconduct against the College President or any member of the Board of Regents, the individual may make a report to the chairperson of TCC's Board of Regents. For allegations of Sexual Misconduct against the Board Chairperson, the individual may make a report to the Vice Chairperson of the Board of Regents. The current membership of the Board of Regents

is available from the Title IX Coordinator ([titleIX@txchiro.edu](mailto:titleIX@txchiro.edu)) or the president's administrative assistant (281-998-6041).

In the event of a complaint against the Title IX Coordinator, President, or Regent, this Policy will apply to the extent practicable, with adjustments as needed to ensure that the investigation and adjudication process are free of conflict and potential bias.

## **7.2 Confidential Consultations Instead of Reporting**

A student who is the alleged victim, alleged perpetrator, or a witness in an incident of alleged Sexual Misconduct may be interested in confidential counseling or psychological care, regardless of whether the individual makes a report or files a complaint. A student may obtain such support from a private provider at their own expense, but may also obtain support from TCC's Health Services. Information regarding free counseling or psychological care can be found on TCC's website at: <https://www.txchiro.edu/life-at-tcc/student-life-services/health-services/>.

An individual's counseling records, Employee Assistance Program records, and medical records are confidential and will not be used by the College in a Sexual Misconduct grievance process without the individual's written consent.

## **7.3 Anonymous Reports**

Any person may make an anonymous report to a Title IX Coordinator at [titleIX@txchiro.edu](mailto:titleIX@txchiro.edu), via the online portal, through a link obtained on TCC's website at <https://www.txchiro.edu/title-ix/>, or by sending a written letter via email, U.S. mail, or hand delivery. However, depending on the facts and circumstances of the anonymous report and the allegation being reported, TCC may be limited in its ability to stop the alleged conduct, collect evidence, or remedy the situation. A report may be characterized as anonymous if the name of the reporting party is unknown or if the names of the alleged victim and/or respondent are unknown.

## **7.4 Reports to Law Enforcement and Outside Entities**

The right to report Sexual Misconduct to the Title IX Coordinator and TCC Administration is separate from the right to make a report to the police or other external entities. Individuals may report Sexual Misconduct to such outside entities regardless of whether they have made a report to TCC. Additional reporting options include the following:

- Any person may report a crime to law enforcement by calling 9-1-1.
- Any person may report a crime to the Office of Enrollment Services (281-998-5705), the Pasadena Police Department (281-477-1221), or another police agency with jurisdiction. A police department's geographic jurisdiction will depend on the location of the incident.

When a suspected crime is reported to the Office of Enrollment Services, TCC's after-hours security personnel, or a police agency, those offices may share the report with the College's Title IX Coordinators if the report involves allegations of Sexual Misconduct.

In most cases, the College will leave to the discretion of the alleged victim whether to report to law enforcement. However, an individual may request that a Title IX Coordinator assist with making a police report or coordinating with the police.



## **7.5 Medical Care and Evidence Preservation**

Alleged victims of Sexual Misconduct such as sexual assault or dating violence are encouraged to seek medical care as promptly as possible after the incident. Seeking medical assistance is essential to obtain treatment, if needed, and to preserve evidence related to Sexual Misconduct, including DNA evidence and evidence of bruising or other injuries. Alleged victims should avoid washing, showering, or changing clothes, if possible, before a medical exam or treatment. Clothing, if removed, should be placed in a paper bag. Email threads, text message conversations, and other communications and electronic documents should be saved and not altered.

Victims of Sexual Misconduct should consider seeking a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) if the incident occurred within the previous four calendar days. For more information, please see <https://www.texasattorneygeneral.gov/crime-victims/services-crime-victims>. The cost of the forensic portion of the exam may be covered by law enforcement or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

## **7.6 Other External Reports**

Individuals may make a confidential report to a community rape crisis center, clergyperson, or a health care provider of the student's choice. These off-campus providers are not required to make a report to TCC's Title IX Coordinator but could do so with the alleged victim's consent. Off-campus resources in Pasadena and Houston are listed at <https://www.txchiro.edu/title-ix/>.

Any person may contact the Office for Civil Rights to report a violation of or to receive information regarding Title IX Sexual Harassment:

Office for Civil Rights  
U.S. Department of Education  
1999 Bryan St., Suite 1620  
Dallas, Texas 75201-6810  
214-661-9600  
214-661-9587 (fax)

Inquiries regarding the application of Title IX may also be made to the Assistant Secretary for Civil Rights of the Department of Education.

## **7.7 Immunity from Discipline**

To encourage reporting of Sexual Misconduct, TCC will grant immunity (also known as amnesty) from disciplinary action to students and employees who in good faith report Sexual Misconduct, file a Formal Complaint, or participate as a witness in a Sexual Misconduct grievance process.

While no disciplinary action will be taken against reporting parties, alleged victims, or witnesses in these situations, TCC may address health and safety concerns for the individual or community, including student organizations, based on information learned from a report or Formal Complaint of Sexual Misconduct.

Immunity from discipline does not apply to the alleged perpetrator or Respondent who is accused of engaging in Sexual Misconduct.

## **8.0 TCC's Initial Response to a Report of Sexual Misconduct**

### **8.1 Notice of Measures and Right to File a Formal Complaint**

After receiving a report of Sexual Misconduct from any person, a Title IX Coordinator or designee must promptly contact the alleged victim to discuss the availability of Supportive Measures as defined in Section 3.0 of this Policy. The Title IX Coordinator or designee should consider the alleged victim's wishes concerning supportive measures, inform the alleged victim of the availability of supportive measures with or without the filing of a Formal Complaint, and explain the process for filing a Formal Complaint.

Supportive Measures are available to alleged victims even if no Formal Complaint is filed. After a Formal Complaint has been filed, supportive measures are available to both the alleged victim (the "Complainant") and the alleged perpetrator (the "Respondent").

The Title IX Coordinator or designee(s) has the discretion to offer Supportive Measures to a reporting party or other third party who is not the alleged victim of Sexual Misconduct.

TCC must maintain as confidential any Supportive Measures provided under this Policy to the extent that maintaining confidentiality would not impair TCC's ability to provide the Supportive Measure. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

### **8.2 Written Notice of Title IX Grievance Process**

In response to a report of Sexual Misconduct involving a known alleged victim, the Title IX Coordinator or designee should evaluate the reported allegations to determine whether the allegations, if proven, would constitute Title IX Sexual Harassment or Other Sexual Misconduct. If the report alleges Title IX Sexual Harassment, the Title IX Coordinator or designee should provide written notice to the alleged victim of the right to file a Formal Complaint under the Title IX Grievance Process. If the report alleges Other Sexual Misconduct but not Title IX Sexual Harassment, the notice should provide information on the process for filing a complaint regarding Other Sexual Misconduct.

If the Title IX Coordinator or designee lacks sufficient information to decide whether the alleged misconduct is Title IX Sexual Harassment or Other Sexual Misconduct, the Title IX Coordinator or designee may communicate with the alleged victim and, if necessary, any other reporting party to obtain more information about what has been alleged. Such communication aims solely to understand what is alleged, not to determine the veracity of the allegations. The need to clarify the allegations should not delay the offer of Supportive Measures to the alleged victim.

Upon receipt of additional information from the alleged victim and/or any other reporting party, if the Title IX Coordinator or designee still lacks sufficient information to determine which grievance process to use, the Title IX Coordinator or designee will provide notice of the right to file a Formal Complaint under the Title IX Grievance Process with the understanding that the Formal Complaint could be dismissed under Title IX if, upon receipt of further information about the allegations, it becomes clear that the Title IX Grievance Process in Section 9.0 is not the appropriate process for addressing the allegations.

A third party who reports Title IX Sexual Harassment cannot file a Formal Complaint in any circumstance where they are not the alleged victim of the conduct being reported.

### **8.3 Emergency Removal**

In some circumstances, TCC may determine that removing a student or other individual who is alleged to have engaged in Sexual Misconduct from campus would be appropriate before determining responsibility. Emergency removal can result in removal from a specific activity or in temporary suspension from all campuses and activities.

To remove a person through an emergency removal, TCC must conduct an individualized safety and risk analysis to determine if the individual poses an immediate threat to the physical health or safety of a student or other member of the campus community arising from the allegations of Sexual Misconduct.

If a student is subjected to emergency removal, the Title IX Coordinator shall send written notice of the removal to the person via hand delivery, or electronic mail and first-class U.S. mail. The written notice should notify the individual removed of the right to challenge the emergency removal decision.

A student subjected to an emergency removal may challenge the removal by submitting a written request to the Title IX Coordinator within five calendar days of the emergency removal. The Title IX Coordinator will schedule the meeting regarding the emergency removal decision within five working days of receiving the student's request, barring unforeseeable circumstances. For students, the meeting shall be conducted by the Chief Academic Officer or, if that administrator is involved in any way in the underlying charge of misconduct, by the Chief of Clinics.

For non-students subjected to emergency removal, the College will provide the removed individual with notice and an opportunity to be heard regarding the decision in a meeting with a Title IX Coordinator or designee.

A proceeding to challenge an emergency removal does not decide the merits of the underlying charge. An emergency removal will take effect immediately even if the individual removed seeks an opportunity to challenge the removal.

The provisions relating to emergency removal do not modify any rights that an individual may have under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

### **8.4 Employee Administrative Leave**

In some circumstances, TCC may determine that removing an employee who is alleged to have engaged in Sexual Misconduct would be appropriate before a deciding responsibility. Administrative leave can include a temporary reassignment, restrictions on access to a part of campus, or suspension from campus. Administrative leave of an employee must be approved by the Director of Human Resources and will comply the terms and conditions of the employee's contract and relevant TCC policies and procedures.

The provisions relating to administrative leave do not modify any rights that an employee may have under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

## **8.5 Confidentiality Generally**

Individuals identified as alleged victims, alleged perpetrators, and witnesses in Sexual Misconduct cases may desire privacy and to avoid public disclosure of their names. TCC seeks to be respectful of each person's interest in privacy. However, under state law, most TCC employees have an obligation to report sexual harassment, sexual assault, dating violence, domestic violence, and stalking to a Title IX Coordinator. Additionally, when a Formal Complaint is initiated and the allegations are investigated, certain disclosures will be necessary to conduct a fair and thorough investigation and adjudication. Therefore, some information, including the parties' names, may be disclosed to investigators, witnesses in the case, other alleged victims in the same case, the alleged perpetrator, parties' advisors, decision-makers, appellate officers, TCC administrators, TCC attorneys, and TCC regents responsible for overseeing compliance with this Policy and applicable law.

## **8.6 Alleged Victim's Request Not to Investigate**

In some instances, an alleged victim of Sexual Misconduct will decline to file a Formal Complaint and/or will ask TCC not to investigate allegations under this Policy. In some instances, the alleged victim may be unwilling to speak with TCC about the matter. TCC will strive to be respectful of the alleged victim's wishes, recognizing the potential impact of an unwanted investigation upon the alleged victim. In such situations, TCC also must weigh the rights, interests, and safety of all parties and the larger TCC community in evaluating whether to proceed with an investigation against the wishes of the alleged victim or without the alleged victim's participation. There may be occasions when the Title IX Coordinator concludes that an investigation is necessary.

Before signing a Formal Complaint, the Title IX Coordinator will evaluate whether it would be unreasonable in light of the known circumstances not to sign a Formal Complaint and initiate an investigation under this Policy. As part of this evaluation, TCC will consider the following factors:

- The seriousness of the alleged conduct;
- Whether TCC received other reports of Sexual Misconduct involving the same alleged perpetrator(s);
- Whether there is a risk of harm to others; and
- Any other evidence that TCC determines to be relevant to the analysis.

In cases in which the Title IX Coordinator has determined that it is appropriate to sign a Formal Complaint and proceed with an investigation, the Title IX Coordinator or designee will inform the alleged victim in writing of TCC's decision. The Title IX Coordinator is not considered a party to the grievance process. The alleged victim remains the "Complainant" and has all rights outlined in this Policy for complainants. However, the alleged victim or Complainant is not required to participate in the grievance process, and no adverse inference will be drawn based on the Complainant's non-participation.

If the Title IX Coordinator decides not to sign a Formal Complaint, TCC will take steps determined to be possible and necessary to mitigate risks to the health and safety of the TCC community concerning the alleged incident.

## **9.0 TITLE IX GRIEVANCE PROCESS**

This section governs the grievance process for Title IX Sexual Harassment. TCC will investigate and adjudicate allegations of Title IX Sexual Harassment only if there is a Formal Complaint on file as defined in this Policy.

### **9.1 Principles Relating to TCC's Title IX Grievance Process**

Equitable Treatment: TCC shall treat all individuals involved in the Title IX Grievance Process (complainants, respondents, witnesses, and any other involved person) equitably and shall not discriminate against the individuals on the basis of sex or any other unlawful basis. All individuals involved in TCC's Title IX Grievance Process will be treated fairly, with dignity, respect, and sensitivity, and without bias, prejudice, conflict of interest, or reliance on stereotypes.

No Bias or Conflict of Interest: Any individual designated by TCC as a Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator for this Title IX Grievance Process must serve impartially and must not have a conflict of interest or bias for or against complainants or respondents generally, or for or against an individual complainant or respondent.

Standard of Proof: TCC will determine responsibility based on the "preponderance of the evidence" regardless of whether the respondent is a student or employee. To establish something by a "preponderance of the evidence" means to show the greater weight of the credible evidence. This standard is satisfied if the fact or conduct is deemed more likely than not to have occurred.

Respondent Presumed Not Responsible: A respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made, using a preponderance of the evidence standard, at the conclusion of the Title IX Grievance Process.

Right to an Advisor: The parties have an equal right to have an advisor of their own choosing present during any part of the Title IX Grievance Process, including the opportunity to be accompanied to any meeting or proceeding under this Policy. An advisor of choice may be, but is not required to be, an attorney. Except as stated in this Policy, advisors may not actively participate in meetings or hearings and must not disrupt the proceedings.

If a party has an advisor, the party must provide the name and contact information of the advisor to the Title IX Coordinator at least 24 hours before the first meeting or proceeding that the advisor will attend. However, if the first proceeding is the hearing, the party must provide notice at least five calendar days before the hearing. The notice must state whether TCC is authorized to communicate with the advisor and to share information as required by this Policy.

Objective Evaluation of the Evidence: Investigators and decision-makers must objectively evaluate all relevant evidence presented during the Title IX Grievance Process. Evidence is deemed relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence, and (b) the fact is of consequence in determining the matter. Investigators and decision-makers must objectively evaluate and consider both inculpatory evidence (evidence that tends to show an individual is responsible for the alleged conduct) and exculpatory evidence (evidence that exonerates or tends to clear an individual from responsibility).

Credibility determinations may not be based on an individual's status as a complainant, respondent, or witness. Investigators, decision-makers, and appeal officers will not prejudge the facts at issue or rely on sex stereotypes in the evaluation of the evidence.

Privileged Information: TCC should not seek or use information protected by any legally-recognized privilege during the Title IX Grievance Process unless the privileged is waived in writing by the person holding the privilege. Legally-recognized privileges include, but are not limited to, the attorney-client privilege, the physician-patient privilege, and the psychotherapist-patient privilege.

TCC will not 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 or assisting in the capacity in connection with the provision of treatment to the party, unless TCC obtains the party's voluntary, written consent to do so for purposes of the Title IX Grievance Process.

If a party seeks or uses information protected by any legally-recognized privilege, the party must provide written documentation indicating that the individual holding the privilege has waived the privilege and consents to the use of the information for purposes of the Title IX Grievance Process.

Giving Notice to the Parties Required by this Policy: When this Title IX Grievance Process requires notice to the parties, notice shall be provided by regular first-class mail and/or email to the TCC email address or other email address designated by the parties. A first-class letter will be deemed to have been received on the third day after the date of mailing, excluding any intervening Sunday or federal holiday. An email will be deemed to have been received on the day after the message is sent. Notice also can be accomplished through hand delivery. A party's failure to update their postal and email addresses with TCC, refusal to accept delivery of a letter, or refusal or failure to open email will not constitute good cause for failure to comply with a notice.

## **9.2 Timeframe for Title IX Grievance Process**

Barring unusual circumstances (e.g., multiple reporting parties or a complaint filed immediately before winter break), TCC's Title IX Grievance Process will be completed within 150 calendar days from the filing of the Formal Complaint. This timeline assumes that the investigation phase may take approximately 90 calendar days and that the hearing and appeal phase may take approximately 60 calendar days.

Reasonable extensions and temporary delays for good cause are allowed with written notice to the parties and, if the extension is sought by someone other than a Title IX Coordinator, to the Title IX Coordinator. Good cause may include, but is not limited to, the illness of a party, a party's advisor, or a witness; concurrent law enforcement activity; a public health emergency; or the need to arrange for language assistance or accommodation of disabilities.

## **9.3 Written Notice of Allegations**

Upon receipt of a Formal Complaint of Title IX Sexual Harassment, the Title IX Coordinator or designee will provide written notice to the complainant and respondent containing the following:

- The allegations of sexual harassment with sufficient detail known at the time including the identities of the parties involved in the incident, the conduct allegedly constituting Title IX Sexual Harassment, and the date and location of the alleged incident, if known.

- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the Title IX Grievance Process.
- A statement that TCC will use the preponderance of the evidence standard to determine responsibility.
- Notice that the parties may have an advisor of their choice who may be, but is not required to be, an attorney.
- Notice that the parties and their advisor may inspect and review the evidence directly related to the allegations of sexual harassment at the end of the investigation.
- Information regarding TCC's Title IX Grievance Process, including notification regarding an informal resolution process, if applicable, and the right to appeal a determination of responsibility.
- Notice that this Policy prohibits knowingly making false statements or knowingly submitting false information during the Title IX Grievance Process.
- If, in the course of an investigation, TCC decides to investigate additional allegations that are not included in the initial Notice of Allegations, TCC will provide supplemental written notice of the additional allegations to the affected parties.

#### 9.4 Evaluation of Allegations for Jurisdiction

After sending the Notice of Allegations, the Title IX Coordinator or a designee will determine whether the Formal Complaint includes allegations which, if proved, would constitute Title IX Sexual Harassment.

The Title IX Grievance Process applies if the following conditions are met:

- When the alleged victim filed the Formal Complaint, the alleged victim was participating in or attempting to participate in an education program or activity of TCC.
- The alleged conduct involves **all** of the following:
  1. The conduct is based on sex.
  2. The conduct is unwelcome to the alleged victim.
  3. The conduct involved at least one of the following:
    - a. "Quid pro quo" harassment by an employee, *or*
    - b. Sexual assault, *or*
    - c. Domestic violence, *or*
    - d. Dating violence, *or*
    - e. Stalking, *or*
    - f. "Hostile environment" harassment that is so severe, pervasive, and objectively offensive that a reasonable person would be denied equal access to the school's program or activity if they experienced the conduct.
  4. The conduct occurred in an education program or activity of TCC in which TCC exercised substantial control over both the alleged perpetrator (respondent) and the context of the harassment.
  5. The conduct occurred in the United States.

If the Formal Complaint lacks pertinent information necessary to evaluate TCC's jurisdiction, such as the location of the incident, the Title IX Coordinator or designee shall provide the complainant a reasonable amount of time to provide supplemental information before deciding that there is no Title IX jurisdiction. The purpose of communication with the complainant at this stage is solely to understand what is alleged.

If the Formal Complaint satisfies the definition of Title IX Sexual Harassment, the grievance process will begin. If the complaint also includes allegations of Other Sexual Misconduct that occurred in conjunction with Title IX Sexual Harassment, this Title IX Grievance Process will apply to both categories of alleged misconduct.

### **9.5 Mandatory Dismissal**

TCC must dismiss a Formal Complaint if the criteria for Title IX Sexual Harassment set forth in Section 9.4 are not all met.

If a Formal Complaint is dismissed under this Section, TCC may still investigate the matter in accordance with other TCC policies and procedures when applicable, including the procedures relating to Other Sexual Misconduct.

### **9.6 Permissive Dismissal**

TCC may dismiss a Formal Complaint for any of the following reasons:

- Request from Complainant. TCC may dismiss a Formal Complaint if the Complainant requests dismissal in writing. In assessing such a request, the Title IX Coordinator or designee should consider the same factors discussed in Section 8.6, "Alleged Victim's Request Not to Investigate."
- Party No Longer Employed. TCC may dismiss a Formal Complaint if a party is no longer employed with the College.
- A Party's Enrollment Ends. In certain circumstances, TCC may dismiss a Title IX Formal Complaint if a student-respondent withdraws or graduates from TCC; however, if a Formal Complaint and disciplinary discharge are still pending when the student's enrollment ends, a written determination must be reached. In such instances, TCC shall expedite the process as necessary to accommodate both parties' interests in a complete and speedy resolution. The following procedure will be used in situations in which the respondent leaves TCC while a Formal Complaint is pending:

If the Title IX Grievance Process investigation has concluded, but the decision-maker has not issued a ruling, the hearing will proceed, and the decision-maker will issue their ruling.

If a Title IX Grievance Process investigation has not yet concluded, the Title IX Coordinator will dismiss the Formal Complaint under the Title IX Grievance Process. The investigation will be completed and adjudicated using the procedures for Other Sexual Misconduct. TCC may use the same investigator and rely on any investigation materials obtained or prepared under the Title IX Grievance Process.



If a student-respondent withdraws before the final determination of responsibility, TCC will determine if the respondent will be ineligible to reenroll for a non-academic or non-financial reason. If the respondent is ineligible to reenroll for a non-academic or non-financial reason, TCC shall include on the respondent's transcript the notation that the student is ineligible to reenroll in TCC for a non-academic or non-financial reason, as required under 19 Texas Administrative Code § 3.30(b). TCC may, but is not required, to state the specific reason for ineligibility to reenroll.

- Other Circumstances. TCC may dismiss a Formal Complaint if other circumstances prevent TCC from gathering evidence sufficient to decide the allegations in the Formal Complaint.

### **9.7 Notice of Dismissal**

If TCC dismisses a Formal Complaint under Sections 9.5 or 9.6 of this Policy, the Title IX Coordinator or designee must notify both parties in writing of the dismissal, the reasons for the dismissal, and the right to appeal the dismissal decision under Section 9.11 of this Policy.

### **9.8 Consolidation of Complaints**

The Title IX Coordinator or designee may consolidate Formal Complaints by one or more complainants against the same respondent or multiple respondents if the allegations arise from the same facts or circumstances. The Title IX Coordinator or designee will provide notice in writing to all parties if consolidation occurs.

### **9.9 Investigation Process for a Title IX Grievance**

Formal Complaints that are not dismissed will be investigated as follows:

Identification of Investigator: The Title IX Coordinator will notify the complainant(s) and respondent(s) of the name and contact information of the investigator(s).

Concurrent Law Enforcement Activity: TCC has an independent duty to respond to Formal Complaints. TCC will not routinely wait for the outcome of a criminal or civil justice proceeding before investigating a Formal Complaint. In consultation with the relevant police agency or District Attorney's Office, TCC may temporarily delay the investigation or Title IX Grievance Process so as not to interfere with criminal justice activities. TCC will consider and balance the interests of the complainant, the respondent, and TCC. TCC will provide the parties with written notice of any delay and the reason for the delay.

Written Notice of Interviews/Meetings: The investigator(s) will provide reasonable written notice to a party of any investigative interview or other meeting for which the party is invited or expected to attend. The notice must include the date, time, location, participants, and purpose of the interview or meeting and must provide sufficient time for the party to prepare to participate. In most cases, 24 hours will be sufficient after the investigator provides notice of an interview or meeting for the party to prepare, but a party may request additional time if reasonably needed.

Principles of Investigation: During the investigation, the burdens of proof and gathering evidence sufficient to reach a determination regarding responsibility rest on TCC and not on the parties. However, the investigator will not collect or consider the following types of evidence:

- Evidence subject to a legally-recognized privilege unless the party who holds the privilege waived the privilege in writing;
- A party's medical, psychological, and similar treatment records without the party's voluntary, written consent to do so; or
- Evidence about a complainant's prior sexual behavior unless it is offered to prove that someone other than the respondent committed the alleged misconduct or is offered to prove consent.

Interviews: The investigator(s) shall interview the complainant, the respondent, and other individuals determined by the investigator to possess relevant information necessary for adjudication. In some instances, if a party or witness declines to be interviewed or is unavailable despite repeated attempts to contact the person, the investigation will continue without an interview of that person. No adverse inference will be drawn based solely on the non-participation of a party or witness.

Parties' Right to Gather and Present Evidence: The parties' ability to discuss the allegations under investigation or gather and present relevant evidence will not be restricted. The complainant and the respondent will be permitted to submit evidence, including inculpatory and exculpatory evidence, to the investigator(s), including documents, emails, text messages, photographs, and recordings. The complainant and the respondent each may suggest witnesses to interview, including fact and expert witnesses, and questions to ask witnesses. The decision whether to interview an individual and what questions to ask, however, is a matter of professional judgment for the investigator(s) in light of the allegations and the availability of the witnesses or evidence. The investigator(s) will prepare a typed summary of or notes from each witness interview and party interview, and the summaries will be included in the investigation record.

Providing the Evidence to the Parties and Opportunity for Written Response: Before completing the investigation report, the investigator will provide the parties with access to any evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint so that each party can meaningfully respond to the evidence before the conclusion of the investigation. All directly related evidence must be provided, including inculpatory and exculpatory evidence, whether obtained from a party or other source, even if TCC does not intend to rely on the evidence to reach a determination regarding responsibility. The directly related evidence shall be transmitted to the parties (and their advisors if authorized by the parties) in an electronic format or in a hard copy.

Both parties will have ten calendar days to review and respond to the evidence. Extensions of time may be granted for good cause, in which case both parties will be entitled to the same extension. A party must submit a request for an extension of time to the investigator before expiration of the deadline the party seeks to extend.

A party must submit all responses to the evidence in writing to the investigator within the required timeframe. The investigator will promptly provide each party a copy of the other party's response, if any.

The Investigation Report: The investigator shall consider the parties' submissions, if any, in response to the directly related evidence before completing the investigation report. The completed investigation report will outline the allegations of sexual harassment, provide a procedural history

detailing the steps taken to conduct the investigation, and fairly summarize the relevant evidence, including witness statements.

Submission of Investigation Report to Parties: The investigator will provide a final investigation report to the Title IX Coordinator and concurrently to each party (and to each party's advisor, if any, if the party has provided consent for disclosure to the advisor). The investigator or the Title IX Coordinator or designee must provide the final investigation report to the parties at least ten calendar days before the hearing date under Section 9.10.

### **9.10 Hearing Process for a Title IX Grievance**

The following process will apply to Formal Complaints involving Title IX Sexual Harassment after completing and delivering the investigator's report under Section 9.9.

Written Notice of the Hearing. The Title IX Coordinator or designee will provide at least ten calendar days written notice to parties of the hearing date. The notice will provide the name and contact information of the Hearing Officer (Decision-Maker). The notice shall contain a statement of the alleged conduct, identify the purpose of the hearing (to determine responsibility for the alleged conduct), state that the respondent is presumed not responsible, state that a determination regarding responsibility will be made at the end of the hearing based on a preponderance of the evidence, and identify the range of sanctions available should the respondent be found responsible. The notice shall state that each party may have an advisor of their choice at the hearing and that, if the party does not have an advisor, TCC will provide an advisor at no charge. The notice shall state that advisors' participation during the hearing is limited to asking questions of the other party or witnesses unless otherwise permitted by the hearing panel. The parties must notify the Title IX Coordinator or their designee of the names and contact information for any advisor who will attend the hearing at least five calendar days before the hearing.

A party without an advisor should contact the Title IX Coordinator or designee for information. Depending on availability, TCC may arrange for appointment an advisor who is an employee, independent contractor, or attorney or law intern from an area law school.

The notice of hearing will specify a hearing date or state that a hearing date will be set by the Hearing Officer following a telephonic or virtual pre-hearing meeting with the parties (and their advisors, if applicable) to discuss hearing logistics, potential evidentiary issues, and any other preliminary issues that could be addressed prior to the hearing. The Hearing Officer may establish pre-hearing deadlines.

Access to Evidence. Each party and the Hearing Officer will have access to all directly related evidence from the investigation, responses to the directly related evidence, the completed investigation report, and responses to the investigation report at the hearing.

Separate Rooms and Virtual Participation. At the request of either party or in the discretion of the Title IX Coordinator, their designee, or the Hearing Officer, TCC will arrange a hearing with the parties located in separate rooms with technology enabling the Hearing Officer and parties to see and hear the participants answering questions simultaneously. Participants may appear at the hearing virtually and are not required to be physically present at the same physical location of the hearing.

Rules of Decorum.

The following Rules of Decorum apply to all parties, support persons, advisors, and witnesses (“participants”):

1. To avoid disruption and delay, participants may not leave the room or the virtual meeting during the hearing. When a virtual hearing is held, parties and their advisors must remain on camera at all times. The Hearing Officer will establish reasonable breaks, including a break for lunch in the event of a day-long hearing.
  2. No visible apparel or signs are permitted that indicate bias or support for one party over another.
  3. Participants shall not disrupt the proceedings through, for example, side conversations and loud whispering, talking on the phone, texting or typing on a personal device, eating or chewing gum, or reading newspapers or magazines. A participant with dietary needs that require the participant to eat at a particular time of day should confer with the Title IX Coordinator in advance of the hearing date so that a reasonable accommodation can be considered, which could include a brief recess or scheduling the witness for a particular time of day.
  4. Cellular telephones should be completely turned “off” so that no sound or vibration will be emitted.
  5. Recordings of any type by the parties are prohibited.
  6. During cross examination, only a party’s advisor may speak or address the other party or their witnesses.
  7. No participant will engage in applause, heckling, outbursts, banging on a desk, or other disruptive behavior.
  8. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by that person.
  9. Participants shall avoid gestures and facial expressions that are demeaning, mocking, or harassing.
10. Decorum and Advisors
- a) Advisors shall not yell or be abusive or badgering. Advisors shall not use profanity (unless the profanity relates to substantive evidence, such as statements in a text message). Advisors shall not engage in *ad hominem* attacks upon other participants or the Hearing Officer.
  - b) Questions must be conveyed in a neutral tone. The purpose of a question to obtain factual information, test witness knowledge, compare or contrast testimony, or understand a fact or prior testimony or evidence.
  - c) The advisor may not ask repetitive questions that have already been answered. When the Hearing Officer determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
  - d) When an advisor asks a relevant question in a manner that violates the Rules, such as yelling or harassing the witness in a sarcastic and disparaging way, the Hearing Officer may find that the question is not relevant. The Hearing Officer will notify the advisor of the violation of the Rules and will allow the question, if otherwise relevant, to be asked in a manner that complies with these rules.

11. Warning and Removal Process

- a) The Hearing Officer shall have sole authority and discretion to determine if the Rules of Decorum have been violated. The Hearing Officer will notify the offending person of any violation of the Rules.
- b) The Hearing Officer may remove the offending person from a portion of the hearing or the remainder of the hearing. If the Hearing Officer removes a party's advisor, the party may select a different advisor of their choice or accept another advisor provided by TCC. A party cannot serve as their own advisor in this circumstance. As appropriate, the hearing may be recessed and continued on another day; any rescheduling shall occur as promptly as possible. The Hearing Officer shall document any decision to remove an advisor in the written determination regarding responsibility.
- c) Advisors who engage in flagrant, multiple, or continual violations of these Rules in one or more proceedings may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis.

Conducting the Hearing. The hearing is an administrative hearing. Courtroom rules of evidence and civil procedure will not apply. Evidence, however, must be relevant and of the type that would be accepted by reasonable persons in the conduct of their important affairs. The Hearing Officer may give evidence less weight based on its reliability. The Hearing Officer will rule on procedural matters and objections regarding testimony and exhibits.

Hearings are closed to members of the public. The hearing will be recorded in audio or audiovisual format or by court reporter and may be transcribed at the discretion of TCC. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

Each party may make an opening statement and closing argument. Opening statements ordinarily shall be limited to ten minutes per side. The Hearing Officer shall determine the number of minutes that the parties will be given for the closing arguments, taking into consideration the complexity of the case. Each party will receive the same amount of time for opening statements and closing arguments. Neither party may present new evidence during closing arguments.

Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge credibility. The Hearing Officer may ask questions during the hearing of any party or witness.

Each advisor has the ability to ask questions directly, orally, and in real time at the hearing. Advisors may not harass or badger witnesses. The parties themselves may not ask questions of the other party or any witnesses; all questions must be asked by an advisor for the party. Advisors shall ask questions as follows:

- The advisor will ask a question of the other party or a witness.
- Before the question is answered, the Hearing Officer will rule whether the advisor's question is relevant to the alleged conduct charges.
- If the Hearing Officer finds that the proposed question is irrelevant, the Hearing Officer must explain the decision to exclude the question.
- If the Hearing Officer allows the question, the party or witness should answer the question.

A party or witness may decline to submit to cross-examination or answer specific questions at the hearing. When deciding responsibility, the Hearing Officer may consider statements made by the parties and witnesses at the hearing, during the investigation (such as a signed witness statement), or during conversations between the parties, such as text messages, regardless of whether the party or witness submits to cross-examination or answers specific questions about those statements at the hearing. The Hearing Officer may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions but may consider refusal to participate or answer questions in conjunction with other evidence. The Hearing Officer must carefully weigh all relevant evidence.

Irrelevant Evidence: When assessing the relevance of questions and evidence, the Hearing Officer must consider the following evidentiary limitations:

- Questions and evidence about a complainant's prior sexual behavior are irrelevant unless offered to prove that someone other than the respondent committed the alleged misconduct or is offered to prove consent.
- TCC will not use or rely on a party's medical, psychological, and similar treatment records unless the party has provided voluntary, written consent.
- TCC will not use, rely on, or seek disclosure of information protected under a legally-recognized privilege unless the person holding such privilege has waived the privilege.
- The Hearing Officer will not make credibility determinations based on a person's status as a complainant, respondent, witness, student, or employee.

Legal Counsel. The Hearing Officer and/or Title IX Coordinator or designee may seek legal advice from an attorney as appropriate during the hearing on any of these or other evidentiary questions, even if such would require a recess in the hearing.

Remedies, Disciplinary Action, and Sanctions. Remedies must be designed to restore or preserve equal access to TCC's education program or activity.

If the respondent is a student, remedies may include counseling or training; imposition of continuing restrictions on access to a location or program; suspension of rights or privileges; suspension or expulsion; withholding of diploma, and other disciplinary action, sanctions, or remedies appropriate to the circumstances and as informed by the evidence.

If the respondent is an employee, possible disciplinary action or remedies may include counseling or training; reprimand; job demotion or reassignment; suspension; nonrenewal; termination; and other sanctions or remedies appropriate to the circumstances and as informed by the evidence.

If the respondent is a third party, possible sanctions include restrictions on access to a location or program or a ban on visiting TCC property.

Hearing Officer Determination: The Hearing Officer shall prepare a written determination within 15 working days of the close of the evidence. The Hearing Officer will engage in an objective evaluation of all relevant evidence.

The written determination must contain the following information:

- Restatement/identification of the allegations of sexual harassment;
- A description of the procedural steps leading to the hearing, beginning with the date of the filing of the Formal Complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- The findings of fact supporting the Hearing Officer's determination based on a preponderance of the evidence;
- Conclusion(s) and a rationale as to whether the respondent is responsible for each incident of alleged misconduct based on the College's policies, procedures, or code of conduct;
- The discipline or sanctions, if applicable;
- The remedies, if applicable, designed to restore the complainant's access to the education program or activity; and
- TCC's appeal procedure and permissible bases for a party to appeal.

The Hearing Officer will transmit a copy of the determination concurrently to the Title IX Coordinator and the parties (and to a party's advisor when authorized by that party).

If the respondent is an employee, the Hearing Officer will transmit a copy of the determination to the Title IX Coordinator, the Director of Human Resources, and the Chief Academic Officer if the respondent is faculty.

If the respondent is a third party, the Hearing Officer will transmit a copy of the determination to the Title IX Coordinator and to the President or President's designee for implementation.

### **9.11 Appeal Process for a Title IX Grievance**

Either party may appeal a dismissal under Sections 9.5 or 9.6 of this Policy or a final determination under Section 9.10.7 of this Policy within five working days of notification of such a determination.

If no appeal is filed and the Hearing Officer has proposed termination, nonrenewal, or suspension of an employee, the Title IX Coordinator shall transmit the determination to the College President for handling in accordance with the employee's contract and the institution's employment policies.

#### **9.11.1 Grounds for Appeal**

An appeal under Section 9.11 is limited to the following bases:

- A procedural irregularity affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or
- A conflict of interest or bias for or against a party by the Title IX Coordinator or one or more investigators or Hearing Officer that affected the outcome of the case.

### **9.11.2 Submission of Appeal**

Appeals must be submitted in writing to a Title IX Coordinator by the deadline and explain the party's reason(s) and factual basis for challenging the decision. The written appeal may not exceed 6,000 words.

### **9.11.3 Assignment of Appeal Officer**

Appeals shall be heard by TCC's Vice President. If a conflict precludes the Vice President from serving as the appeal officer, the appeal shall be heard by the president or president's designee.

### **9.11.4 Notice of Appeal**

Both parties will be notified in writing when an appeal is filed. The notice will identify and provide contact information for the appellate decision-maker and explain that appeal procedures will apply equally for both parties.

### **9.11.5 Written Response to Appeal**

After receiving notice of an appeal, the non-appealing party and TCC will have seven calendar days to submit a written statement responding to the appeal. The written response to the appeal may not exceed 6,000 words. Upon receipt, the appellate decision-maker will provide a copy of the written statement to the other parties. Each party will then have five calendar days to provide final arguments for or against the appeal in writing to the appellate decision-maker. The final arguments shall not exceed 1,500 words.

### **9.11.6 Appeal Determination**

The appellate decision-maker shall have access to the record of the hearing and the documents received by the Hearing Officer in conjunction with the hearing. The appellate decision-maker will prepare a written decision within 30 calendar days from receipt of the appeal, addressing the grounds stated in the appeal and providing a rationale for the ruling. The appellate officer may submit written questions to the parties if necessary to decide the appeal but must provide the questions to each party simultaneously and provide each party the same time to respond.

### **9.11.7 Notice of Appeal Determination**

The appellate decision-maker will simultaneously provide a copy of the ruling to the parties and the Title IX Coordinator.

## **9.12 Optional Informal Resolution**

At any time after a Formal Complaint is filed, the Title IX Coordinator or designee may, in their discretion, choose to offer and facilitate an Informal Resolution process, so long as both parties give voluntary, informed, written consent to attempt Informal Resolution. TCC may not require the parties to participate in an Informal Resolution process or require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right. Election to participate in an Informal Resolution does not constitute a waiver of the right to proceed with the investigation and adjudication of a Formal Complaint. At any time prior to conclusion of the Informal



Resolution process, any party has the right to withdraw from the Informal Resolution process and resume the Formal Complaint process.

When the parties agree to resolution using the Informal Resolution process, the Informal Resolution is final and is not subject to appeal. Any person who facilitates an Informal Resolution will be experienced and trained in dispute resolution and trained on Title IX.

Matters Not Eligible for Informal Resolution. No Informal Resolution process will be offered before a Formal Complaint is filed. No Informal Resolution process will be offered to resolve Formal Complaints in which a student is the Complainant and an employee is the Respondent.

## **10.0 GRIEVANCE PROCESS FOR OTHER SEXUAL MISCONDUCT**

This Section describes TCC's process for investigating and adjudicating Formal Complaints of Other Sexual Misconduct as defined in Section 3 of this Policy.

### **10.1 Formal Complaints involving Other Sexual Misconduct**

If a Formal Complaint involves Other Sexual Misconduct but does not involve Title IX Sexual Harassment, an investigation will be initiated under this section if the complaint articulates specific facts, which if assumed to be true, would support a finding that this Policy, other TCC policy, or the Code of Student Conduct was violated.

TCC may decline to process a Formal Complaint that involves Other Sexual Misconduct if the complaint does not describe conduct covered by this Policy, Code of Student Conduct, or other TCC policy. In addition, TCC may decline to process a Formal Complaint for any of the reasons specified in Section 9.6 above.

If TCC declines to process a complaint, the Title IX Coordinator or designee shall send the complainant a written notice explaining the reason(s). The Title IX Coordinator or designee should consider whether the alleged conduct implicates other College policies or procedures and, if so, forward the matter to the appropriate department or administrator for further review or action.

### **10.2 Alleged Victim Declines to Submit a Formal Complaint of Other Sexual Misconduct**

If TCC receives a report of Sexual Misconduct and (i) the alleged victim declines to submit a Formal Complaint of Other Sexual Misconduct and (ii) the report does not involve Title IX Sexual Harassment, TCC nonetheless may desire to address the conduct by gathering facts and, if appropriate, counseling or disciplining the alleged offender or taking other remedial action. TCC may investigate the matter and impose sanctions as stated in this subpart, in the following circumstances:

- The alleged victim has declined to file a Formal Complaint of Other Sexual Misconduct but has agreed to disclosure of the alleged victim's name.
- The alleged victim has declined to file a Formal Complaint of Other Sexual Misconduct and does not agree to disclosure of the alleged victim's name, but it is possible to investigate and/or take remedial action without disclosing the name of the alleged victim.

- The alleged victim has declined to file a Formal Complaint of Other Sexual Misconduct and does not agree to disclosure of the alleged victim's name, but the Title IX Coordinator has determined, as stated in Section 8.6 of this Policy, that an investigation is necessary due to broader concerns about public safety.

TCC will notify the alleged victim if the College decides to investigate an incident in the absence of a Formal Complaint of Other Sexual Misconduct.

If TCC initiates an investigation under Section 10, the Title IX Coordinator or designee shall notify both parties in writing of the allegations and inform them of their right to submit a written response to the allegations within five working days, unless unusual circumstances warrant additional time. Barring unusual circumstances, the grievance investigation and adjudication process under Section 10 will be completed within 150 calendar days from the filing of the Formal Complaint.

### **10.3 Claims against Student Respondents**

The Title IX Coordinator or designee will assign an impartial investigator to promptly investigate the allegations in the Formal Complaint of Other Sexual Misconduct. Students will have reasonable and equitable access to all evidence relevant to the alleged violation in TCC's possession, redacted as necessary to comply with any applicable federal or state law regarding confidentiality.

The investigator will prepare a written investigation report with findings of fact and a determination regarding responsibility. The investigator will consider the totality of circumstances, including the context and duration of the conduct and its severity. The investigation report and determination regarding responsibility will be submitted in writing to the Title IX Coordinator, the parties, and Chief Academic Officer or designee. Within five working days of receipt of the investigation report, a party may submit a response to the Chief Academic Officer or designee regarding the investigation report; the response cannot exceed 2,000 words, and a copy must be provided to the other party, the investigator, and the Title IX Coordinator. The Chief Academic Officer or designee will review the investigation report, investigation record, and the parties' responses, if any. If the report includes a finding of responsibility, shall determine a sanction in accordance with applicable TCC policies and procedures. The determination of the Chief Academic Officer or designee shall be completed within 15 working days of receipt of the investigation report. The Title IX Coordinator or designee shall promptly notify the parties in writing of the determination and provide a copy.

### **10.4 Claims against Employee Respondents**

The Title IX Coordinator or designee will assign an impartial investigator to investigate the allegations in the Formal Complaint of Other Sexual Misconduct. The investigator will prepare a written investigation report with findings of fact and a determination regarding responsibility. The investigator will consider the totality of circumstances, including the context and duration of the conduct and its severity. The investigation report and determination regarding responsibility will be submitted in writing to the Title IX Coordinator, the employee-respondent, the student complainant, and Executive Vice President or designee. Within five working days of receipt of the investigation report, a party may submit a response to the Executive Vice President or designee regarding the investigation report; the response cannot exceed 2,000 words, and a copy must be provided to the other party, the investigator, and the Title IX Coordinator. The Executive Vice President will review the investigation report, investigation record, and the parties' responses, if any. If the report includes a finding of responsibility, then the Executive Vice President shall determine a sanction in accordance with applicable TCC policies and procedures. The determination shall be completed within 15

working days of the investigation report. The Title IX Coordinator or designee shall promptly notify the parties in writing of the determination and provide a copy.

If the proposed discipline is termination, then the proposal shall be submitted to the College President. Applicable TCC policies and procedures for employee terminations shall be followed.

### **10.5 Claims against Third Party Respondents**

“Third party respondents” are persons who are not employees, students, or regents of TCC. This term includes campus visitors, students from other schools, and vendors providing service at TCC property and facilities. The term includes individuals who provide off-site instructional or clinical experiences for students and organizations with whom TCC has a contractual relationship or memorandum of understanding. If the respondent works for an organization with whom TCC conducts business, the Title IX Coordinator will determine if a contract or memorandum of understanding provides procedures for notifying the organization and addressing the complaint against the respondent. TCC will comply with applicable contract procedures, including procedures pertaining to available remedies and required notifications.

The Title IX Coordinator will assign an impartial investigator to investigate the allegation. The investigator will promptly investigate the allegations in the Formal Complaint. The investigator will prepare a written investigation report with findings of fact and a determination regarding responsibility. The investigator will consider the totality of the circumstances, including the context and duration of the conduct and its severity. The completed investigation report and determination regarding responsibility will be submitted to the Title IX Coordinator, the parties, and the President or designee. Within 15 working days, the President or designee will review the investigation report and investigation record. If the report includes a finding of responsibility, then the President or designee shall determine a sanction in accordance with applicable TCC policies and procedures. The Title IX Coordinator shall promptly notify the parties in writing of the determination. If the respondent works for an organization with whom TCC conducts business, TCC shall follow any applicable procedures for notifying the organization.

## **11.0 OTHER RULES AND ADDITIONAL CONDUCT VIOLATIONS**

### **11.1 False Statements or Information**

Any person who in bad faith knowingly files a false complaint under this Policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from TCC. A determination that a respondent is not responsible for allegations of Sexual Misconduct, including Title IX Sexual Harassment, does not establish the falsity of a report, Formal Complaint, or evidence. Similarly, determining that a respondent is responsible for a policy violation does not imply that a respondent’s statements disclaiming responsibility were false.

### **11.2 Interference with the Grievance Process**

Any person who interferes with a TCC Grievance Process as provided in this Policy is subject to disciplinary action up to and including dismissal or separation from TCC. Actions that constitute interference with a Grievance Process include, but are not limited to:

- Attempting to coerce, compel, or prevent an individual from providing testimony or evidence;

- Removing, destroying, or altering documentation relevant to the Grievance Process; or
- Knowingly providing false or misleading information to a Title IX Coordinator, investigator, hearing officer, or appeal officer, or encouraging others to do so.

## **12.0 CALCULATING DEADLINES UNDER THIS PROCEDURE**

When a deadline is stated in terms of “calendar” days and the deadline falls on a weekend or state or federal holiday, the deadline shall be moved to the next day that does not fall on a weekend or a holiday.

When a deadline is stated in terms of “working” days, the deadline shall be calculated based on the days TCC is open for business (whether in person or virtually). The term “working days” excludes winter break.

## **13.0 ACCESSIBILITY SERVICES REQUESTS**

A student or employee who is a qualified person with a disability under federal law and needs assistance complying with this Policy or any procedure set forth in this Policy may contact the Title IX Coordinator or designee for assistance.

## **14.0 NO EFFECT ON PENDING PERSONNEL OR ACADEMIC ACTIONS UNRELATED TO THE ALLEGATIONS IN THE FORMAL COMPLAINT**

The filing of a Formal Complaint will not prevent or delay any action unrelated to the allegations of Title IX Sexual Harassment or Other Sexual Misconduct in the Formal Complaint, including: (1) any evaluation or disciplinary action relating to a student or employee with an unsatisfactory performance or who has violated other TCC rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a College employee.

## **16.0 GRIEVANCE PROCESS DOCUMENT RETENTION**

TCC shall retain for seven years all documentation related to a Grievance Process, including documents relating to the investigation, hearing, and any appeal.

**POLICY HISTORY**

<b>DATE</b>	<b>ACTION(S)</b>
<i>5/15/23</i>	<i>Approved</i>
<i>9/1/23</i>	<i>Revised, updated President information</i>