H.2.1.1 (Procedure) Civil Rights Under Texas Law: Sexual Harassment, Sexual Assault, Dating Violence, and Stalking Complaints, Resolution, and Appeals

Responsible Departments: Alamo Colleges District
Title IX/VII/ADA/505 Coordinator
Based on Board Policy: H.2.1 Civil Rights Under Texas Law: Sexual Harassment, Sexual Assault, Dating Violence and Stalking Complaints, Resolution and Appeals
H.1.1 Equal Education and Employment Opportunities
Board Approved: 7-28-20
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Pupose

This procedure complies with Subchapter E-3 in Chapter 51 in the Texas Education Code, which requires a policy and protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking by students and employees. This procedure overlaps in part the procedure under "federal law" implementing Title IX regulations which also cover sexual harassment, sexual assault, dating violence, and stalking. This procedure establishes the protocol for Alamo Colleges District required by Subchapter E-3 for students and employees.

I. Mission Statement

The College District and its Colleges prohibit sexual harassment, sexual assault, dating violence, and stalking by students and employees, require the reporting of such conduct, and are committed to responding to reports, as set forth in this procedure. The College District and its Colleges support the following:

(a) The importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;
(b) The right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the College District and Colleges and to receive a prompt and equitable resolution of the report; and
(c) The right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the College District or a College in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

II. Definitions of Prohibited Conduct

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1. *"Dating violence"* has the meaning assigned in the Violence Against Women Act (VAWA), 34 U.S.C. §12291(a), as referenced in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), 20 U.S.C. §1092(f)(6)(A)(v). *Tex. Educ. Code §51.281(2).* Under the VAWA, "dating violence" means violence committed by a person:

(a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
(b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. *(34 U.S.C. §12291(a)(10)).*

2. *"Sexual Assault"* has the meaning assigned in VAWA, as referenced in the Clery Act, 20 U.S.C. §1092(f)(6)(A)(v). *Tex. Educ. Code §51.281(2).* Under the Clery Act, "sexual assault" is an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. *(20 U.S.C. §1091(f)(6)(A)(v)).*

3. *"Sexual harassment"* means 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 at a postsecondary educational institution. *Tex. Educ. Code §51.281(4)(A and B).*

4. *"Stalking"* has the meaning assigned in VAWA, as referenced in the Clery Act, 20 U.S.C. §1092(f)(6)(A)(v). *Tex. Educ. Code §51.281(2).* Under VAWA, "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. *(34 U.S.C. §12291(a)(30)).*

III. Reporting of Prohibited Conduct

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1. **Electronic Reporting** A student enrolled at or an employee of the institution may electronically report an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option (a) enables a student or employee to report the alleged offense anonymously; and (b) is easily accessible through a clearly identifiable link on the College District's Internet website home page. *Tex. Educ. Code §51.283.* The electronic link for the College District is found at AlamoCares; the electronic

link for each a College is in the Colleges individual website. Although a report may be made anonymously, an anonymous report by a victim prevents the imposition of interim measures and cannot be investigated.

2. **Verbal Reporting.** A student enrolled at a College may verbally report an incident of sexual harassment, sexual assault, dating violence, and stalking to the College Title IX Coordinator or Title IX Lead at the College Title IX Office. A The ACD, a District or College Title IX Coordinator may complete and sign a Formal Complaint for a student under Title IX and take into consideration any student-victim's request not to investigate. The names and contact information for the College Title IX Coordinators Leads Title IX Leads at the Colleges are listed in H.1.2 Attachment A.: Title IX/VII/IV/ADA/504 Coordinator Contact List.

   An employee may verbally report an incident of sexual harassment, sexual assault, dating violence, and stalking to the Almao Colleges District Title IX/VII/ADA/504 Coordinator, the District Title IX Coordinator for Employees --, whose names and contact information are listed in Appendix A to this procedure. Reports by an employee are deemed to be reported to the College District.

3. **Amnesty Reporting Certain Incidents.** A College may not take any disciplinary action against a student enrolled at any of the Colleges who in good faith reports to being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation of the Subchapter E-3 occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the College's disciplinary process regarding the incident, if any. *Tex. Educ. Code §51.284(a).* The foregoing does not apply to a student or employee who reports his/her own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking. *Tex. Educ. Code §51.284(d).* This section III(2) may not be construed to limit a College's ability to provide amnesty from application of the College District's or Colleges' policies in circumstances not described by Subsection (a). *Tex. Educ. Code §51.284(e).*

   (a) The College District or College may investigate to determine whether a report of an incident of sexual harassment, sexual assault, dating violence, or stalking was made in good faith. *Tex. Educ. Code §51.284(b).*
   (b) A determination that a student or employee is entitled to amnesty under (a) above is final and may not be revoked. *Tex. Educ. Code §51.284(c).*

4. **Confidential Discussion.** Each college of the College District is a postsecondary educational institution as defined in the Texas Education Code. As required by Sub-chapter E-3, the College District and each College designate one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972 and show on Appendix A to this procedure. Students enrolled at one or more of the Colleges may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking with a counselor at the college at which they are enrolled. *Tex. Educ. Code §51.290(a)(1)(A and B).* A Personal Counselor- or an Employee Assistance Program Counselor with whom the student or employee speaks confidentially may not disclose any communication made by the student to the employee unless the student consents to the disclosure or the employee is required to make the disclosure under state or federal law. *Tex. Educ. Code §51.290(a)(1)(A and B).*

   (a) All Alamo Colleges District and College employees who are not employed as a ***Personal Counselor*** or designated as a Confidential Employee are ***Mandated Reporters*** for all the details of which they are aware about an incident. Mandated Reporters must share this information with the Title IX Coordinator. Giving a ***Mandated Reporter*** notice of an incident constitutes official notice to the institution. Incidents of sexual misconduct will be taken seriously when official notice is given to the institution. Such incidents of sexual misconduct will be investigated and resolved ina prompt and equitable manner under the ***Alamo Colleges District Civil Rights/Title IX Policies and Procedures.***

5. **Confidentiality in Reporting.** Confidentiality in reporting incidents of prohibit conduct apply to:

   (a) an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a college; *Tex. Educ. Code §51.291(a)(1).*
   (b) a person who reports to a College an incident of sexual harassment, sexual assault, dating violence, or stalking and who sought guidance from the institution concerning such an incident or who participated in the institution's investigation of such an incident; *Tex. Educ. Code §51.291(a)(2.* and
   (c) a person who is alleged in a report made to a postsecondary educational institution to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking if, after completing an investigation, the institution determines the report to be unsubstantiated or without merit. *Tex. Educ. Code §51.291(a)(3).*

6. **Disclosure of Identity.** Unless waived in writing by the person, the identity of a person described above:

(a) is confidential and not subject to disclosure under Chapter 552, Texas Government Code; *Tex. Educ. Code §51.291(b)(1).* and

(b) may be disclosed only to:

(1) the College District or the College to which the report is made as necessary to conduct an investigation of the report; *Tex. Educ. Code §51.291(b)(2)(A).*

(2) a law enforcement officer as necessary to conduct a criminal investigation of the report described by section III(4) above; *Tex. Educ. Code §51.291(b)(2)(B).* or

(3) a health care provider in an emergency situation, as determined necessary by the College District. *Tex. Educ. Code §51.291(b)(2)(C).*

7. **Other Disclosures.** A disclosure as stated in Section III(5)(a) is not a voluntary disclosure for purposes of Section 552.007, Texas Government Code. *Tex. Educ. Code §51.291(c).* Information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking disclosed to a health care provider or other medical provider employed by the College District is confidential and may be shared by the provider only with the victim's consent. The provider must provide aggregate data or other nonidentifying information regarding those incidents to a ACD, District or College Title IX Coordinator. *Tex. Educ. Code §51.291(d).*

IV. Protocol for Responding to Reports of Prohibited Conduct

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1. **Counseling.** To the greatest extent practicable based on the number of Personal Counselors employed by the College District at a College, the College handling the report will ensure that each alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking who is a student is offered counseling provided by a Personal Counselor who does not provide counseling to any other person involved in the incident. *Tex. Educ. Code §51.282(e)(1).* Title IX Coordinators responsible for employees at the District level will refer each alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking who is an employee to the Employee Assistance Program ("EAP") for counseling services.
2. **Student Course Drop.** Notwithstanding any other law, a College will allow an alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking to drop a course in which both parties are enrolled without any academic penalty. *Tex. Educ. Code §51.282(e)(2).*
3. **Interim measures.** The College District or the College handling a report will provide interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking during the pendency of the disciplinary process, including protection from retaliation, and any

other accommodations available to those victims at the institution. *Tex. Educ. Code §51.282(a)(1)(D).*

4. **Procedure for Students.** Once a report of sexual harassment, sexual assault, dating violence or stalking is received and interim measures are provided by a College, the protocols and disciplinary process applicable to students will be followed.. The report must be reduced to a written signed complaint so that an investigation may commence. *Tex. Educ. Code §51.282(a)(1)(C).*
5. **Procedure for Employees.** Once a report of sexual harassment, sexual assault, dating violence or stalking is received and interim measures are provided by the College District for an employee, the protocols and disciplinary process applicable to emploees will be followed. The report must be reduced to a written signed complaint so that an investigation may commence.
6. **Victim Request Not to Investigate.** If an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to the College District or a College requests that either not investigate the alleged incident, the College District or a College handling the report may investigate the alleged incident in a manner that complies with the confidentiality requirements under Sections III(5-6) above. *Tex. Educ. Code §51.285(a).* In determining whether to investigate the alleged incident, the College District or a College shall consider:

   (a) the seriousness of the alleged incident;
   (b) whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;
   (c) whether the alleged incident poses a risk of harm to others; and
   (d) any other factors the institution determines relevant. *Tex. Educ. Code §51.285(a)(1-4).*

7. **Investigation Decision.** Whichever is handling the report, the College District or College shall inform an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking who requests not to investigate the alleged incident of the decision whether to investigate the alleged incident. *Tex. Educ. Code §51.285(c).*

   If the College District or College decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking based on the alleged victim's request not to investigate, whichever is handling the report shall take any steps determined necessary to protect the health and safety of the College District's or College's community in relation to the alleged incident. *Tex. Educ. Code §51.285(b).*

V. Disciplinary Process for Students

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1. **Student Code of Conduct.** The disciplinary process for students will be followed in the event that a College initiates a disciplinary process concerning an allegation that a student enrolled at one or more of the Colleges violated the Student Code of Conduct by committing sexual harassment, sexual assault, dating violence, or stalking. *Tex. Educ. Code §51.286.* The procedure:
   a) provides to the student and the alleged victim a prompt and equitable opportunity to present witnesses and other evidence relevant to the alleged violation during the disciplinary process; *Tex. Educ. Code §51.286(1).*
   b) ensures that both the student and the alleged victim have reasonable and equitable access to all evidence relevant to the alleged violation in the College's possession, including any statements made by the alleged victim or by other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality; *Tex. Educ. Code §51.286(2).* And
   c) provides reasonable steps to protect the student and the alleged victim from retaliation and harassment during the pendency of the disciplinary process. *Tex. Educ. Code §51.286(3).*

2. **Student Withdrawal or Graduation Pending Disciplinary Charges.** If a student withdraws or graduates from one of the Colleges pending a disciplinary charge alleging that the student violated the Student Code of Conduct by committing sexual harassment, sexual assault, dating violence, or stalking, the College handling the disciplinary process:

   a) may not end the disciplinary process or issue a transcript to the student until the College makes a final determination of responsibility; and
   b) shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution. *Tex. Educ. Code §51.287(a)(1 and 2).*

   On request by another postsecondary educational institution, the College District shall provide to the requesting institution information relating to a determination by the College that a student enrolled at the institution violated the Student Code of Conduct by committing sexual harassment, sexual assault, dating violence, or stalking. *Tex. Educ. Code §51.287(b).*

3. **Disciplinary Sanctions.** A student who is found responsible for committing sexual harassment, sexual assault, dating violence, or stalking in violation of the Student Code of

Conduct will be imposed one or more sanctions listed in the Student Code of Conduct deemed appropriate for the violation(s). *Tex. Educ. Code §51.282(a)(1)(B).*

VI. Disciplinary Process for Employees

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1. **Civil Rights Procedures.** The disciplinary process for employees stated in Civil Rights Procedures H.1.2.1 and H.1.2.2 will be followed in the event that the College District initiates a disciplinary process concerning an allegation that an employee violated the Civil Rights Procedures by committing sexual harassment, sexual assault, dating violence, or stalking. *Tex. Educ. Code §51.286.* The Civil Rights procedures:

   a) provide to the employee and the alleged victim a prompt and equitable opportunity to present witnesses and other evidence relevant to the alleged violation during the disciplinary process; *Tex. Educ. Code §51.286(1).*
   b) ensure that both the employee and the alleged victim have reasonable and equitable access to all evidence relevant to the alleged violation in the College District's possession, including any statements made by the alleged victim or by other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality; *Tex. Educ. Code §51.286(2).* And
   c) provide reasonable steps to protect the employee and the alleged victim from retaliation and harassment during the pendency of the disciplinary process. *Tex. Educ. Code §51.286(3).*

2. **Disciplinary Sanctions.** An employee who is found responsible for committing sexual harassment, sexual assault, dating violence, or stalking in violation of the Civil Rights Policy and Procedures will be subjected to disciplinary action up to and including termination of employment. *Tex. Educ. Code §51.282(a)(1)(B).*

VII. Institutional Requirements

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1. **Policy Publication.** The College District shall make the sexual harassment, sexual assault, dating violence, and stalking policy available to students, faculty, and staff members by (a) including the policy in Board Policies and any student handbooks; and (b) creating and

maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the College District's Internet website home page. *Tex. Educ. Code §51.282(b)(1and 2).*

2. **Student Orientation.** The College District shall require each entering freshman or undergraduate transfer student to attend an orientation on the sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term in which the student is enrolled at the institution. District Student Success shall establish the format and content of the orientation. The orientation (a) may be provided online; and (b) must include the Mission Statements in Section I above. *Tex. Educ. Code §51.282(c).*

3. **Prevention and Outreach.** The College District shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking. *Tex. Educ. Code §51.282(d).* The program must:

   (a) address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a victim empowerment program, a public awareness campaign, primary prevention, bystander intervention, and risk reduction; and
   (b) include providing students information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking adopted including the name, office location, and contact information of the District Title IX Coordinator for Students by:
      (1) e-mailing the information to each student at the beginning of each semester or other academic term; and
      (2) including the information in the orientation required Section VII(2) above. *Tex. Educ. Code §51.282(d)(1 and 2)(A and B).*

4. **Peace Officer Trauma Training.** Each peace officer employed by the College District shall complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking. *Tex. Educ. Code §51.288.*

5. **External Coordination.** To facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the College District and Colleges, the College District may enter into a memorandum of understanding with one or more:
      (1) local law enforcement agencies;
      (2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and
      (3) hospitals or other medical resource providers. *Tex. Educ. Code §51.289.*

6. **Equal Access.** The College District shall, to the greatest extent practicable, ensure equal access for students enrolled at the Colleges or employees of the College District who are persons with disabilities. The College District and Colleges shall make reasonable efforts to consult with Disability Support Services at the Colleges, advocacy groups for people with disabilities, and other relevant stakeholders to assist the College District with complying with the duties of Subchapter E-3. *Tex. Educ. Code §51.293.*

7. **Biennium Review.** Each biennium the College District shall review the sexual harassment, sexual assault, dating violence, and stalking policy and, with approval of the Board of Trustees, revise the policy as necessary. *Tex. Educ. Code §51.282(f).*