

TEXAS STATE TECHNICAL COLLEGE  
**STATEWIDE OPERATING STANDARD**

<b>No. HR 2.4.15</b>	<b>Page 1 of 9</b>	<b>Effective Date: 2/28/2019</b>
<b>DIVISION:</b>	<b>Human Resources</b>	
<b>SUBJECT:</b>	<b>Prohibiting Sexual Misconduct and Gender-Based Discrimination</b>	
<b>AUTHORITY:</b>	<b>Minute Order #48-15</b>	
<b>PROPOSED BY:</b>	<b>Jonathan Hoekstra</b>	
<b>TITLE:</b>	<b>Vice Chancellor &amp; Chief Financial Officer</b>	<b>Date: 2/28/2019</b>
<b>RECOMMENDED BY:</b>	<b>Jonathan Hoekstra</b>	
<b>TITLE:</b>	<b>Vice Chancellor &amp; Chief Financial Officer</b>	<b>Date: 2/28/2019</b>
<b>APPROVED BY:</b>	<b>Mike Reeser</b>	
<b>TITLE:</b>	<b>Chancellor</b>	<b>Date: 2/28/2019</b>

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 Approved by VCs 09/25/15  
 Proposed 08/2015

**I. STATEWIDE STANDARD**

**POLICY:** It is the policy of Texas State Technical College (TSTC) that the College provide and maintain a workplace and an educational environment free of, and protected from, sexual misconduct and discrimination based on gender.

**II. PERTINENT INFORMATION**

[Title IX of the Education Amendments of 1972](#) protects people from discrimination based on sex in education programs or activities which receive federal financial assistance. Title IX states, in part, that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...”

### III. GENERAL GUIDELINES

TSTC shall take measures to ensure that all employees, students, and visitors have the right to work and learn in an environment free of sexual misconduct and gender-based discrimination. All investigations of sexual misconduct and gender-based discrimination shall be handled with utmost respect and confidentiality for the victim and the accused. In the event that the investigation yields a finding, swift and appropriate action shall be taken, up to and including termination and expulsion.

### IV. DEFINITIONS

**Bullying:** Repeated and/or aggressive physical or mental behavior that is intimidating or controlling.

**Complainant:** Individual making the complaint of sexual misconduct or gender discrimination.

**Consent:** Agreement to engage in sexual conduct or activity explicitly verbalized (saying “yes”) or given by active, willing participation by all parties involved. Sexual consent cannot be given by anyone who is underage, who is under the influence of alcohol or drugs, or who is otherwise mentally impaired or incapable of giving knowledgeable, informed consent.

**Cyber Bullying:** Repeated and/or aggressive written, graphic, or verbal harassment that is transmitted through any electronic/digital device.

**Domestic Violence:** Violent or aggressive behavior within the home, typically involving the violent abuse of a spouse or partner.

**Gender Discrimination:** Discrimination based on sex, including discrimination based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. The federal [Title IX](#) regulation also prohibits a school from applying any rule related to a student’s parental, family, or marital status that treats students differently based on their sex.

**Hazing:** Acts related to the admission, initiation, or pledging of a formal or informal group that are likely to cause physical, psychological, or social harm.

**Incapacitation:** Lacking the ability or capacity to have a reasonable understanding of the situation one is in due to lack of sleep, disability, involuntary physical constraint, or consumption of alcohol or drugs.

**Preponderance of the Evidence:** The majority of the evidence which would cause a reasonable person to draw a conclusion.

**Respondent:** Individual against whom the complaint of sexual misconduct or

gender discrimination is made.

**Retaliation:** An adverse action taken to try to keep someone from opposing a discriminatory practice. The act could be intimidation, force, or threats communicated in any form, including verbal and electronic communication.

**Sexual Misconduct:** Conduct that includes any or all of the following:

1. Sexual Harassment – Unwelcome gender-based verbal or physical conduct that is sufficiently severe, persistent, and pervasive to interfere with, deny, or limit someone’s ability to participate in or benefit from the College’s educational programs and/or activities (the creation of a “hostile environment”). It can also include “quid pro quo” (this for that) offers of some good (employment, raise, etc.) in exchange for sexual favors.
2. Nonconsensual Sexual Contact (Or Attempts) – Intentional sexual touching, however slight, with an object and/or body part(s) by an individual towards another individual that is without consent or done forcefully.
3. Nonconsensual Intercourse (Or Attempts) – Any form of sexual intercourse (vaginal, oral, or anal) regardless of how slight the penetration without consent. Also referred to as a sexual assault/rape.
4. Sexual Exploitation – Obtaining a personal gain for one’s self or for another by taking advantage of an individual in a sexual nature. Examples include, but are not limited to, invasion of sexual privacy, prostituting another person, non-consensual video or audio taping of sexual activity, going beyond the boundaries of consent, engaging in voyeurism, knowingly transmitting a sexually transmitted disease or HIV to another person, exposing one’s genitals in nonconsensual circumstances or inducing another to expose their genitals, and sexually-based stalking and/or bullying.
5. Acquaintance Rape – Nonconsensual sexual intercourse (rape/sexual assault) by someone known to the complainant.
6. Sexual Violence – Act of violence that includes a sexual element (nonconsensual sexual contact, rape). Includes same sex violence/incidents.
7. Sexual Abuse – Sexual interaction between an adult and a minor, including sexual intercourse or sexual contact.

**Stalking:** Repetitive behavior that involves calling, texting, emailing, following, and/or otherwise communicating with an unwilling individual and which interferes with the peace of the individual and/or the individual’s community. It is behavior that is directed toward a specific individual or individuals that would cause a reasonable person to fear for his/her own or another’s safety and/or causes one to experience substantial emotional distress.

## **V. DELEGATION OF AUTHORITY**

The Chancellor has the authority and responsibility to establish procedures to ensure compliance with this Statewide Operating Standard (SOS).

## **VI. PERFORMANCE STANDARDS**

1. The Office of Human Resources acquaints, at least annually, all employees with the College's policy on sexual misconduct and gender discrimination.
2. Current TSTC policy and procedures on prevention and reporting sexual misconduct and gender discrimination are posted on the [TSTC Website](#).
3. Within 30 days of being hired, all new employees are given information about the current policy and procedures on prevention and reporting sexual misconduct/gender discrimination; have signed a statement acknowledging receipt of the information; and have agreed, as a condition to employment, to abide by the terms of the practice. The signed acknowledgement statement is placed in the employee's personnel file in the Office of Human Resources.
4. All employees receive training on preventing and reporting sexual misconduct and gender discrimination at least every two years. Record of their participation is maintained.
5. The Enrollment Management Division provides ongoing training to acquaint all students with TSTC practices on sexual misconduct and prevention programs.
6. Current summaries of the practices and procedures prohibiting sexual misconduct and gender discrimination are included in the [TSTC Catalog and Student Handbook](#), which can be found on the [TSTC Website](#).
7. All complaints about sexual harassment, complaints about sexual misconduct and gender discrimination, or reports of sexual violence by employees, visitors, and/or students are handled in accordance with the Operating Requirements of this SOS. Once a report has been made to the local Campus Security Authority (CSA), the CSA will take the appropriate steps in the investigation process.

## APPENDIX

### VII. RELATED STATEWIDE STANDARDS. LEGAL CITATIONS, OR SUPPORTING DOCUMENTS

[HR 2.4.1 Employee Corrective Action](#)  
[GA 1.16 Reporting of Wrongdoing or Retaliation](#)  
[Grievance/Complaint Form TSTC O-HR-013](#)  
[Title IX of the Education Amendments of 1972](#)  
[TSTC Catalog and Student Handbook](#)

### VIII. OPERATING REQUIREMENTS:

1. TSTC shall encourage victims of sexual assault to report the offense immediately to the TSTC Police/Security Department and/or local police agency. Evidence of the assault should be preserved whenever possible. The victim should not bathe or shower and should not throw away or wash the clothes worn at the time of the assault. The victim shall be offered campus assistance at all times during the reporting process and shall, to the extent permitted by law, be offered anonymity if requested. (*See the section on confidentiality in Operating Requirements No. 6 for further clarification regarding victim anonymity.*)
2. Process for Employees or Visitors: An employee or visitor who believes he/she has been subjected to any form of sexual misconduct or gender discrimination shall report to and consult with the designated Employee Title IX Coordinator/Representative (who can be contacted through any TSTC Human Resources office).

Any employee who has received a report or complaint from an employee or visitor relating to sexual misconduct or gender discrimination shall immediately notify the designated Employee Title IX Coordinator/Representative.

- a. The designated Employee Title IX Coordinator/Representative shall, without delay, initiate an investigation consisting of meeting with all of the parties and witnesses involved. The meetings shall be private and confidential. The Title IX Investigator (who can be contacted through any Human Resources office) may discuss the complaint or incidence with the appropriate administrators. Interim measures may be deemed necessary by the Title IX Coordinator or appropriate administrator for a complete investigation which could include interim separation from the College or no contact orders until a finding is completed.
- b. The Investigator shall evaluate the findings of the investigation and shall look at the entire incident or circumstances in totality. The Investigator shall consider such things as the nature of the sexual advances or conduct and the context in which the alleged incident(s) occur and shall determine if a

violation or discrimination has occurred.

- c. The Investigator shall make a written report with findings and shall discuss those findings with the appropriate administrator. The Investigator shall operate on the basis of “Preponderance of the Evidence.”
  - d. The report may contain a finding of sexual misconduct or gender discrimination based on preponderance of the evidence, or a finding of no sexual misconduct or gender discrimination based on preponderance of the evidence. In the event that there were no witnesses and the complainant and accused disagree on the facts of the event, the report may reflect that a determination could not be made. The Investigator’s written report shall not contain any recommendations of punishment.
  - e. The appropriate administrator shall take proper action. When deciding what action is proper for a case, he/she may consider the findings of the Investigator, information obtained from his/her own investigation, or other pertinent information relating to the employee. Any disciplinary action shall be conducted according to the current TSTC disciplinary policy and procedure contained within the College’s SOS [HR 2.4.1 Employee Corrective Action](#). The administrator may consult and discuss the case with the complainant, the respondent, and/or the Office of Human Resources.
  - f. The investigation report with findings and the decision of the appropriate administrator shall be forwarded to the designated Employee Title IX Coordinator/Representative. Any disciplinary action taken shall become part of the employee’s personnel record. The report shall include written notice to the parties of the outcome of the complaint and assurance that the College shall take steps to prevent the recurrence of any discrimination or misconduct and to correct effects on the complainant and others, if appropriate.
  - g. The designated Employee Title IX Coordinator/Representative shall continue to monitor the circumstances surrounding the complaint to insure the conduct is remedied. In the event that the behavior has not been corrected, additional disciplinary action, up to and including termination, shall be taken.
3. Process for Students: Students who believe they have been subjected to sexual misconduct or gender discrimination shall report to and consult with the designated Student Title IX Coordinator/Representative (available through any Student Rights and Responsibilities office).

Any employee, including Resident/Community Assistants (RA/CAs), who has received a report or complaint from a student relating to sexual misconduct or gender discrimination shall immediately notify and refer that student to the designated Student Title IX Coordinator/Representative.

- a. The complaint may be oral or in writing, utilizing the TSTC

[Grievance/Complaint Form TSTC O-HR-013](#). After receiving the complaint, the designated Student Title IX Coordinator/Representative shall initiate a thorough, prompt, and equitable investigation. Immediate interim actions may take place before the investigation is complete if determined necessary. These may include an interim suspension, no contact orders, or removal/change from campus housing. When issued, the involved parties shall be expected to adhere to the terms of the interim actions. Violations of interim measures shall not be tolerated and shall be addressed immediately. Students who violate such measures shall be subjected to further disciplinary action up to and including suspension and expulsion.

- b. The Investigator shall follow the procedures outlined in the [TSTC Code of Conduct](#) under “Disciplinary Procedures.” The only exception shall be the formal review process for both parties which shall follow the steps outlined in No. 4 below under “Formal Review Process.” If the respondent is found responsible of the accusations, then the proper sanctions shall be imposed or mediation shall take place when it is acceptable to both parties. In incidents of sexual violence, mediation shall never be acceptable. If the complainant is found to have made a false accusation, then disciplinary sanctions may be imposed.
  - c. If the complaint involves actions of an employee at TSTC, the Investigator shall immediately notify the designated Employee Title IX Coordinator/Representative who shall initiate the employee investigation in accordance with the steps outlined in Operating Requirements No. 2 above.
  - d. In all cases, a prompt, fair, and impartial investigation and resolution shall be afforded.
  - e. The Investigator will report to the Title IX Coordinator/Representative for reporting purposes the date of the alleged misconduct, type of alleged misconduct, result of investigation, actions taken, if there was a formal review, results, and any other pertinent information. The complete investigation documentation shall be kept in the student’s disciplinary records for the duration of the records retention length.
4. Formal Review Process: A request for a formal review may be submitted in writing to the appropriate Title IX Coordinator/Representative by either the respondent or complainant within three working days of receipt of the notice of the outcome of the investigation. The Title IX Coordinator shall arrange a review panel of three TSTC employees who are appointed to serve as the Review Board.
- a. The College shall convene the Review Board in a timely manner, usually within five business days, but in certain situations it may be longer. Both parties shall be notified in advance of the date, time, and location of the review and the panelists. Both parties shall be afforded an opportunity to object to any member of the Review Board. This assures that the Title IX

requirement to afford both parties a fair, impartial, and objective review by unbiased decision makers.

- b. Communication with both parties shall continue during this process. Within two business days prior to the date of the review, a list of witnesses and all documentation must be submitted to the Title IX Coordinator by both parties. The objective of the Review Board shall be to assess the findings and sanctions imposed. The Review Board may not impose more severe penalties.
  - c. Because these proceedings are not designed to be a legal or judicial hearing, the Review Board operates on the basis of “Preponderance of the Evidence.” The decision shall be made by majority vote.
  - d. If a student or employee brings an attorney for the review, he/she must provide sufficient notice (at least two business days) for TSTC to have an attorney present as well. Either attorney shall only serve in an advisory role and shall not be permitted to ask questions, present evidence, or make arguments before the Review Board. The presence of an attorney may cause a delay in the process. If an attorney refuses to follow these requirements, the Review Board may remove him or her.
  - e. All reviews shall be closed.
5. Any form of retaliation by either party shall not be condoned by the College, and the College shall take immediate action to rectify attempts at retaliation. Additional disciplinary action may occur for attempts at retaliation, including separation from the College. Retaliation includes, but is not limited to, intimidation, discrimination, coercion, or threats to either party.
  6. Privacy of individuals and confidentiality of information given shall be maintained to the extent required and/or permitted by law throughout all phases of these procedures. TSTC shall strongly support a complainant’s interest in confidentiality in cases involving sexual misconduct. The College shall make provision to honor such a request, except when the safety of the campus community is at risk or if maintaining confidentiality creates a discriminatory environment for others.
  7. All employees, including Resident/Community Assistants, shall be considered responsible employees and shall have the duty to report sexual misconduct to the proper Title IX Coordinator. Employees must report the name of the person disclosing the sexual misconduct, the alleged perpetrator, and all known relevant facts regarding the incident, including date, time, and location. Employees exempt from this reporting requirement shall include counselors acting in their responsible job duties, such as in counseling and medical consultations, respectively. Counselors and nurses or EMTs shall not be required to report to the Title IX Coordinator and may remain totally confidential. In cases involving



minors, state laws may require disclosure. Steps to ensure the complainant's protection shall be taken.

8. Complainants shall be accorded the following rights:
  - a. The right to a prompt and equitable resolution of sex discrimination complaints;
  - b. The right to present his/her case or have the College present it. This shall include the right to an adequate, reliable, and impartial investigation of complaints, the right to present witnesses and other evidence, and the right to the same review processes for both parties;
  - c. The right to be notified of the time frame within which:
    - i. The College shall conduct a full investigation of the complaint;
    - ii. The parties shall be notified of the outcome of the investigation of the complaint; and
    - iii. The parties may file a review, if applicable;
  - d. The right to be informed of and have access to campus and/or community resources for medical, counseling, and advisory services;
  - e. The right for the complaint to be decided using a preponderance of the evidence standard (*i.e., it is more likely than not that sexual harassment or violence occurred*);
  - f. The right to be notified, in writing, of the outcome of the complaint; and
  - g. The right not to have irrelevant past sexual history admitted in a hearing.
  
9. Respondents shall be accorded the following rights:
  - a. The right to a prompt and equitable resolution of all credible complaints of sexual misconduct made in good faith to College officials against the accused;
  - b. The right to present his/her case. This shall include the right to an adequate, reliable, and impartial investigation of complaints, the right to have an equal opportunity to present witnesses and other evidence, and the right to the same review processes for both parties;
  - c. The right to be notified of the time frame within which:
    - i. The College shall conduct a full investigation of the complaint;
    - ii. The parties shall be notified of the outcome of the complaint; and
    - iii. The parties may file a review, if applicable;
  - d. The right to full disclosure of the nature, rules, and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint;
  - e. The right to be informed of and have access to campus and/or community resources for medical, counseling, and advisory services; and
  - f. The right not to have irrelevant past sexual history admitted in a hearing, unless previous known behavior is similar to the alleged behavior in the current investigation and there is evidence of a pattern of behavior.