

THE AUSTIN COLLEGE POLICY FOR SEXUAL MISCONDUCT AND HARASSMENT

This policy, dated February 4, 2019, supersedes any policies previously adopted and/or published in College handbooks, in the operational guide, or on the website.

Congress passed the Higher Education Amendments in 1972, and included within them was Title IX, which states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” Since 1972, several other federal and Texas state laws have been adopted to offer further protection to those in higher education (i.e., students, employees, and third parties) from discrimination and harassment based on a person’s sex or gender. Austin College is committed to establishing an environment free of such discrimination and prohibits such acts.

Hence, Austin College (the College) will respond to complaints, reports, allegations, and information about sex- and gender-based discrimination of which the College is aware. These responses are intended to stop prohibited conduct, prevent its recurrence, and address any lingering impact on both participants and the campus community. Any retaliation against, or intimidation of those involved in a misconduct incident, be it those bringing a complaint, those accused, or those participating in the resolution process, is prohibited and will not be tolerated by the College.

Austin College supports persons involved in this process through available support services. The College encourages students who wish to receive confidential support services regarding sex- and gender-based discrimination to seek assistance from the Title IX Coordinator, staff in counseling services or health services, the office of the College chaplain, the Grayson County Crisis Center, or to seek other medical attention. Additionally, employees needing support services may seek assistance from the Human Resource Department or the Employee Assistance Program.

Questions regarding Title IX may also be referred to the United States Department of Education’s Office for Civil Rights.

Office for Civil Rights – Dallas Office
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201
Telephone: 214-661-9600
FAX: 214-661-9687; TTD: 877-521-2172 Email: OCR.Dallas@ed.gov

NOTICE OF NON-DISCRIMINATION

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

other characteristic that is protected by applicable state or federal law in its operations, employment opportunities, educational programs, and related activities.

The Austin College Policy for Sexual Misconduct and Harassment (“Sexual Misconduct Policy”) applies to all students, employees, and third parties.

The Vice President for Student Affairs has been designated to handle discrimination or harassment inquiries that do not fall under this policy for students and third parties.

Tim Millerick
Vice President for Student Affairs
Wright Campus Center
900 N. Grand Ave., Suite 61595
Sherman, TX 75090
Telephone: 903.813.2228
Email: tmillerick@austincollege.edu

The Chief Human Resources Officer has been designated to handle discrimination or harassment inquiries that do not fall under this policy for employees.

Keith Larey
Chief Human Resources Officer
Caruth Administration Building
900 N. Grand Ave., Suite 61
Sherman, TX 75090
Telephone: 903.813.2435
Fax: 903.813.3197
Email: klarey@austincollege.edu

SCOPE OF THIS POLICY

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

This policy applies to Austin College students, employees, and third-parties both on and off campus, as well as in cyberspace. Off-campus coverage of this policy includes incidents that occur on employee-led trips, study-abroad sites, internship sites, service-learning sites, college-owned properties, and off-campus residences of students.

DEFINING AND RECOGNIZING PROHIBITED CONDUCT

Conduct that is prohibited and encompassed by this policy includes sexual harassment, sex and gender discrimination, sexual assault, rape, stalking, and relationship abuse (including domestic and dating violence). These acts are also a violation of federal and state law (including Title IX, Title VII, the Campus SaVE Act, and the Violence Against Women Act). These acts are prohibited in any sex or gender configuration (i.e., between the same or differing genders), regardless of sex and gender identity, or in any power configuration. Individuals found responsible for violating these policies will face

sanctions that are commensurate with the severity of the policy violation, ranging from warning to expulsion or termination of employment.

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

A. Sexual Assault

Sexual assault is a form of sexual misconduct that is a violation of the College policy as well as federal and state statutes. Austin College defines sexual assault as actual or attempted sexual contact with another person without that person's consent.

Sexual assault includes:

- intentional touching of another person's intimate body parts without that person's consent;
- other intentional sexual contact with another person without that person's consent;
- coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or
- rape, which consists of 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 consent of the victim.

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

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

B. Sexual Exploitation

Sexual exploitation occurs when a person takes non-consensual, unjust, or abusive sexual advantage of another for their own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. This behavior may not fall within the definition of non-consensual sexual contact/activity, or sexual harassment, but it is still a violation of policy. There are many degrees and types of sexual exploitation. Examples of sexual exploitation are described below.

- Photographing or taping someone (via audio or video) involved in sexual activity, or in a state of undress without their consent or knowledge constitutes prohibited sexual exploitation (even if a person consented to the sexual activity or the state

of undress, photographing or taping someone without their knowledge goes beyond the boundaries of that consent).

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

C. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Examples of this type of harassment are:

- unwanted sexual advances that may take the form of
 - inappropriate sexual or suggestive comments,
 - sounds or jokes;
 - unsolicited touching or fondling;
 - unwanted intercourse or
 - assault;
- unwelcome requests for sexual favors; or
- other behavior of a sexual nature where:
 - Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment or participation in a college-sponsored educational program or activity. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual (often referred to as *quid pro quo* harassment), or
 - Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, as well as creating an intimidating or offensive educational, social, living, or working environment.

D. Harassment Based on Sexual Orientation, Gender, or Gender Identity

Harassment based on sexual orientation, gender, or gender identity is defined as derogatory comments, actions, or conduct that may include acts of verbal, nonverbal, cyber, or physical aggression, intimidation, or hostility, even if those acts do not involve conduct of a sexual nature. Such conduct is directed toward an individual by virtue of their actual or presumed sexual orientation, gender, or gender identity and humiliates or intimidates an individual, impedes academic or work performance, or interferes with college life.

E. Hostile Environment

A hostile environment is created when harassing conduct is sufficiently severe, persistent, pervasive, or offensive that it denies, limits, or interferes with an employee's or student's ability to participate in or benefit from

- educational programs, services, opportunities, or
- activities or employment access, benefits, or opportunities.

F. Stalking

Stalking is a course of conduct directed at a specific person that is unwelcome and would cause a reasonable person to fear for their safety, fear for the safety of others, or suffer emotional distress.

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

G. Relationship Abuse

Relationship abuse can be physical, sexual, verbal, emotional, financial, or digital. It is unwanted and causes physical or emotional harm. At Austin College, relationship abuse encompasses dating violence and domestic violence and can involve current or former intimate partners, spouses, or dating relationships. Relationship violence can occur in both same-sex and different-sex relationships. Examples of relationship abuse include:

- physical abuse, such as hitting, slapping, shoving, grabbing, pinching, biting, hair pulling, or throwing objects at a person.
- sexual abuse, such as attacks on sexual parts of the body, forcing sex after physical violence, treating one in a sexually demeaning manner, coercing or attempting to coerce any sexual contact or behavior without consent, or marital rape.
- psychological or emotional abuse, such as a pattern of behavior undermining a person's sense of self-worth or self-esteem, constant criticism, possessiveness, damaging possessions, threats, intimidation, diminishing a person's abilities, name-calling, public humiliation, or damaging a person's relationship with their friends or family.
- financial abuse, such as taking money from or prohibiting access to bank accounts.
- digital abuse, such as controlling social media accounts, or harassment through social media or other forms of technology.

H. Retaliation

Retaliation occurs when an adverse action is taken against an individual for raising concerns about conduct which is prohibited by law or policy. All members of the Austin College community have the right to raise concerns or file a complaint without fear of retaliation. Additionally, it is a violation of college policy to retaliate against an

individual for filing a report of sexual misconduct or gender-based discrimination. Retaliation is also prohibited against reporting participant, responding participant, and anyone who participates in an investigation of sexual misconduct or gender-based discrimination. Examples of retaliation include hostility, intimidation, threats, exclusion, or discrimination.

J. Complicity

Complicity is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of prohibited conduct by another person.

K. Consensual Relationships

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

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

ADDITIONAL PROVISIONS, DEFINITIONS, AND CLARIFICATIONS

A. Consent

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

- Consent cannot be obtained by force, including:
 - physical violence, meaning that a person is exerting control over another person through the use of physical force. Examples of physical force include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
 - threats, meaning words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

- intimidation, meaning an implied threat that menaces or causes reasonable fear in another person. A person's size alone does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g. blocking access to an exit).
- coercion, meaning the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes a clear decision not to participate in a particular form of sexual contact or sexual intercourse, a decision to stop, or a decision not to go beyond a certain interaction, continued pressure can be coercive. In evaluating whether coercion was used, the College will consider: (a) the frequency of the application of the pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (d) the duration of the pressure. Coercion includes continued pressure after an individual has made it clear that they do not want to engage in the behavior.
- Consent is not present when an individual is incapacitated. An incapacitated individual is someone who cannot make rational, reasonable decisions because that person lacks the capacity to understand the “who, what, when, where, why, or how” of a sexual interaction. This includes a person whose incapacity results from a disability, sleep or lack thereof, involuntary physical restraint, unconsciousness, or use of alcohol or other drugs. Every individual may manifest signs of incapacitation differently; typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional distress, vomiting, or incontinence. The impact of alcohol and other drugs varies from person to person, and **if there is any doubt as to the level or extent of the other person's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.**
- **Being impaired by alcohol or other drugs is not a defense to any violation of this policy, including failure to obtain consent.** In evaluating consent in cases of alleged incapacitation, the College seeks to determine 1) if the person initiating sexual activity knew that the other participant was incapacitated and 2) if not, would a reasonable person have known that the other participant was incapacitated. If the College determines that either of these statements are true, consent was absent.
- Consent is never present if an individual is under the legal age of consent (17 in the State of Texas).

B. Amnesty

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

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

C. Confidentiality

Because breaches of confidentiality compromise the ability of Austin College to investigate and resolve claims of harassment and discrimination, the Title IX Coordinator will attempt to protect the confidentiality of harassment and discrimination proceedings to the extent reasonably possible.

On campus, complete confidentiality can only be guaranteed when a concern is shared with a College-designated confidential source (defined herein) and when the concern does not involve a continuing threat of serious harm to self or others as determined by the Title IX Coordinator.

A list of confidential resources on and off campus is available. The College is obligated to investigate all allegations that may constitute harassment or discrimination. Any person seeking information or guidance concerning potential harassment or discrimination should be advised that the College may need to act once informed of an allegation, whether or not the person wants to pursue a complaint.

D. Academic Freedom and Harassment

Austin College is committed to principles of free speech and upholding the tradition of academic freedom. This policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. The proper exercise of academic freedom does not include harassment or discrimination as defined by this policy.

E. Participants

Title IX Coordinator: This individual is responsible for the oversight of this policy.

Informing Participant: Any person who shares information with the College regarding a possible violation of this policy.

Reporting Participant: An individual who provides notice to the College that they have experienced one or more acts of sexual misconduct described in this policy. If necessary the College can assume the role of reporting participant.

Responding Participant: Any individual who is alleged to have carried out one or more of the prohibited acts defined in this policy.

Process Advisor: The College maintains a list of limited reporter employees who are trained to assist participants understand this policy and the resolution processes. These individuals are appointed by the College. They will report the incident to the Title IX Coordinator; however, they are not required to report personally identifiable information about the reporting or responding participants. Not providing identifying information may limit the College's ability to conduct a thorough investigation and pursue disciplinary action. A process advisor is not a responsible employee as defined in this policy.

Responsible Employees: These persons are College employees who have the authority to redress sexual violence, who have the duty to report incidents of sexual violence or other misconduct, or who a student or employee could reasonably believe has the authority or duty. All College employees and volunteers (defined as individuals having signed such forms in the current academic year) are considered *responsible employees* and have an obligation to report any knowledge of a sexual misconduct incident to the Title IX Coordinator or designee. A report to a responsible employee constitutes a formal report to the College and generally obligates the College to investigate the incident and to take appropriate steps to address the situation. These employees cannot guarantee confidentiality due to Austin College's responsibility to provide a safe campus environment. Reports made to Campus Police will also be reported to the Title IX Coordinator.

Responsible employees include: faculty, administrative staff, coaches, campus police, area coordinators, faculty mentors, communication/inquiry student leaders, resident assistants, and resident language house assistants. Process advisors are limited reporters and therefore are not responsible employees under this definition.

College-appointed work-study students, student-graduate assistants, undergraduate teaching assistants, other student paraprofessionals, and peer leader appointees are exempt from this definition.

Witnesses: The reporting and responding participants have the right to identify any individuals who may be witnesses to the conduct alleged in a formal complaint. Participants may provide an explanation the witness's relevance to this investigation at the time the witnesses are identified to the investigator(s). Participants should be aware that it is possible for both reporting and responding participants to list the same people as witnesses on their behalf. Witnesses are expected to cooperate and speak the truth. Witnesses should not be intimidated, threatened or improperly influenced in any way by either participant or through others individuals (e.g. friends, family members, attorneys, social media, etc). Any attempt to threaten, intimidate or otherwise improperly influence the recollection of a witness will result in a separate disciplinary action by the College. The investigator(s) will attempt to interview any witnesses identified by

the participants that the investigator(s) deems to be relevant to the resolution of the complaint. As members of the Austin College community, students and employees are expected to cooperate with and participate in the investigation process.

Attorneys: Although not necessary, the participants have the right to seek the assistance of a private attorney at their own expense regarding a complaint. This policy and related processes do not attempt to create a courtroom environment and attorneys are not permitted to actively participate in the resolution process. Attorneys will be considered support persons (described below) during the resolution process. Participants should seek legal advice about how this disciplinary process could impact any criminal case in which they are or may become involved. Austin College will conduct its own investigation and resolution of any complaint in accordance with this policy, regardless of whether the alleged misconduct is also being pursued through the criminal justice system.

Confidential Resources: Medical professionals, professional, licensed counselors and the College chaplain are not required to report any information concerning an incident without the participant's permission.

Counseling Services
Adams Center
903.813.2247

College Chaplain
Wynne Chapel
903.813.2220

Medical Professional
Adams Center
903.813.2247

F. Support Person(s)

Each participant in a sexual misconduct investigation is entitled to one support person of their choosing to accompany and assist them throughout the campus resolution process. The support person can be a friend, family member, attorney, faculty member, or any other individual a participant selects who is willing, eligible, and available. A support person cannot be otherwise involved in the process.

Participants are entitled to be accompanied by their support person in all meetings and interviews at which participants are requested to be present. The support person may help their participant prepare for each meeting.

All support persons are subject to the same campus rules, whether or not they are attorneys. They may not present on behalf of their participant at any point during the process including meetings and interviews. They may confer quietly with their participant as necessary, as long as it does not disrupt the process. Support persons are expected to refrain from interference with the College's investigation and resolution. Support persons who step out of their role or otherwise violate this policy during the campus resolution process will be subject to removal as a support person.

The College expects the support persons to adjust their schedules to allow them to attend College meetings, interviews, or other necessary events when scheduled. The College does not typically change such scheduled meetings to accommodate a support person's ability to attend. Other accommodations for participation may be considered (e.g. phone, Skype).

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

G. Jurisdiction

Any person may file a report of sexual misconduct through this process against an Austin College student, employee, or third party, regardless of where the alleged sexual misconduct occurred.

The reporting participant need not be an Austin College student. If the person bringing the report is not a current student or the alleged conduct did not occur on campus, at a college-affiliated location, or at a college-sponsored event, the matter will be referred to the Title IX Coordinator for a determination regarding whether the College can exercise jurisdiction over the matter. In cases where Austin College has exercised jurisdiction, the College will investigate the incident of sex/gender-based harassment or discrimination to the best of its ability, regardless of location.

H. College Initiated Investigations

Austin College may independently initiate a disciplinary investigation/action against a person under this resolution process. In this type of investigation or action, the College will act as the reporting participant in the resolution of a sexual misconduct report against a person. Such reports will proceed under the process outlined herein and may result in disciplinary action as if the reporting participant were a student or employee.

I. Timing of Reports

There is no time limit for the submission of a report alleging sexual misconduct. A report received after the semester has ended or during a college break or holiday may result in a delay of the resolution process until the beginning of the subsequent semester or return to college operation. The College's ability to provide effective sanctions for violations of this policy is limited once the responding participant is no longer enrolled at, employed by, or serving as a third-party at Austin College.

Austin College reserves the right to initiate an investigation of a report immediately when necessary to protect the interests and safety of the Austin College community, even when the incident takes place after the end of the semester.

J. Intentional Presentation of False Information

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

K. No-Contact Orders between Participants

When the Title IX Coordinator receives a report, a no-contact order may be issued barring any communication between the reporting participant and the responding participant. This order prohibits any direct or indirect contact between either of the participants. Indirect contact includes a participant contacting the other participant through other people (friends, family, attorneys) in any way, including social media. The Title IX Coordinator will work with participants involved in this resolution process to help facilitate the no-contact order between the participants, so that they may attend classes, perform work-related tasks and use college facilities as appropriate. A no-contact order may be extended after the conclusion of the resolution process at the request of either participant. In cases where a demonstrated violation of this order has been shown, the participant who violated the non-contact order may be separated from the College pending the remainder of the resolution process. Austin College police are able to provide information and assistance to students or employees who wish to seek a protective order from the courts.

L. Parental Notification

Since Austin College views students as adults, parents and guardians will not be notified when a formal complaint is filed under this policy. Parents of minors who are not students at Austin College may be notified as determined by the Title IX Coordinator. Students are encouraged to inform their parent(s) or guardian(s) if they are involved in a disciplinary action and should refer them to the Title IX Coordinator for questions.

RESOLUTION PROCESS

A. Reporting an Incident

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

- seek formal action against someone.

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

A person who has experienced an incident of conduct prohibited by this policy may file a report against the participant responsible for that conduct.

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

Title IX Coordinator

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

Deputy Title IX Coordinator

Jake Sapp
 Administration Building, Room 211
 900 North Grand Ave., STE 6I
 Sherman, TX 75090
 Telephone: 903.813.2432
 Email: jsapp@austincollege.edu

Austin College is committed to the prompt and equitable resolution of all alleged or suspected violations of this policy about which the College knows or reasonably should know. The College maintains this commitment regardless of whether a report alleging a violation of this policy has been filed and regardless of where the alleged conduct occurred. In resolving a particular matter, the College may use some or all of the following processes: **initial assessment and interim measures, administrative agreement, informal resolution, formal resolution, sanctioning and appeal**, as described herein. Regardless of the specific processes employed, the College will seek to complete the investigation and resolution process (excluding any appeals) within 60 days unless the College determines in its discretion that more time is required. In this case the participants will be notified of the need for an extension of the 60-day period. The College will provide periodic updates as it deems appropriate.

The College's ability to investigate an alleged incident, or the extent of the investigation in any given situation, may be affected by any number of factors. These factors include whether the report is anonymous, whether the reporting

participant is willing to file a complaint or consent to an investigation, the reporting participant's request for confidentiality, the location where the alleged incident occurred, and the College's access to information relevant to the alleged incident. In instances where the reporting participant is unwilling or unable to file a report or participate in an investigation and resolution process, the College may elect to proceed and to seek resolution of the matter in accordance with the processes described below or other process that resolve the complaint in a manner consistent with applicable law, the Office for Civil Rights (OCR) or other relevant government guidance.

The Title IX Coordinator will review the available options with both reporting and responding participants. These include the opportunity to request interim measures as well as the opportunity to request that the situation be resolved through either administrative agreement, the informal resolution process, or the formal resolution process. The reporting participant and the responding participant will receive periodic updates regarding the status of the resolution.

B. Preliminary Contact and Interim Measures

The Title IX Coordinator will make a preliminary assessment of the report(s), which will determine whether the alleged conduct would present a potential violation of the policy and what further action is warranted.

The Title IX Coordinator will implement any appropriate interim measures and remedies to protect the safety and well-being of those involved as well as the campus community. Such measures and remedies may be requested by or provided to those involved. Academic interim measures will be coordinated with and communicated to the faculty member(s) of record and the Academic (divisional) Dean or the Vice President for Academic Affairs. Interim measures will be kept confidential to the extent that maintaining such confidentiality would not impair the ability of the College to provide interim measures. Interim measures will be confirmed in writing. Examples of interim measures include:

- counseling services.
- changes to academic, living, dining, transportation, and campus work situations.
- academic assistance, accommodations or adjustments.
- obtaining and enforcing campus no-contact orders.
- honoring an order of protection or a no-contact order entered by a State civil or criminal court.
- providing safety escorts from the Austin College police.

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

C. Confidentiality and Non-Retaliation

During the resolution process all participants should not disclose or discuss anything relating to the formal report with anyone other than those authorized to

see/hear such information under the process. Participants are free to discuss the facts underlying the subject of the complaint with counselors, clergy, support persons, advisors, attorneys, and parents. Participants should refrain from discussing the formal report with anyone affiliated with Austin College who is not part of the resolution process. This is to preserve the integrity of the investigation and prevents retaliation. All participants must refrain from any retaliatory conduct against other participants and witnesses in the matter and may be responsible for any retaliation by persons affiliated with her/him.

D. Initial Assessment

The first step of the initial assessment will typically be a meeting between the reporting participant and the Title IX Coordinator. At this time, a written complaint may be submitted by the reporting participant, but a written complaint is not necessary; information provided by the reporting participant in any form will be considered in resolving allegations reported to the College. This initial meeting will allow the Title IX Coordinator to do the following:

- assess the nature and circumstances of the allegation;
- discuss the types of conduct prohibited by the policy and review the reporting participant's complaint as it pertains to the prohibited conduct;
- address any immediate concerns about the physical safety and emotional well-being of the participants;
- notify the reporting participant of the option to notify law enforcement and to be assisted in doing so;
- provide the reporting participant with information about the range of available on- and off-campus resources;
- describe the range of interim measures and remedies for security and support to all participants;
- in cases where the college believes there is a risk of harm to the reporting participant or others, the College may, at its discretion, impose an interim suspension or leave of absence on the responding participant;
- discuss the options afforded to the reporting participant by this policy, including the right to a support person, the informal resolution process, administrative agreement, the formal resolution process, and the need to preserve any relevant evidence or documentation in the case;
- inform the participant that the College prohibits any retaliation against individuals who have filed a report or participated in any manner in an investigation or proceeding under this policy;
- assess whether there is a need for a timely warning or emergency notification under federal law; and
- provide the participant with a written copy of this policy.

If the reporting participant requests at any time that their identity remain confidential or that no formal action be taken, the College will balance this request along with its responsibility to foster an educational environment that is

free of discrimination and harassment for all members of the campus community.

As soon as practical after the initial meeting with the reporting participant, the responding participant(s) will also be notified that a report or complaint alleging a violation of the policy has been made unless the College determines that notifying the responding participant is not necessary or appropriate under the circumstances. When notified of the report or complaint, the responding participant will also receive parallel discussions regarding the policies in this document, including the right to a support person, available interim measures, the informal resolution process, administrative agreement, the formal resolution process, and the need to preserve any relevant evidence or documentation in the case. All participants will be informed that the College prohibits any retaliation against participants who have filed a report, assisted, or participated in any manner in an investigation or proceeding under this policy. The responding participant(s) will be provided with a written copy of this policy.

E. Interim Measures

Throughout the investigation and resolution process, the Title IX Coordinator will monitor the effectiveness of interim measures or remedies and coordinate with all participants and appropriate College personnel on the provision and implementation of these measures.

F. Administrative Agreement

The responding participant may elect to accept responsibility for the alleged policy violation at this stage or at any later stage throughout the process. To execute an administrative agreement the responding participant must acknowledge the policy violation, accept the proposed sanction(s), and waive any opportunity for appeal.

G. Informal Resolution Process

Where appropriate, the informal resolution process can be used to resolve allegations of sexual misconduct or interpersonal violence by taking immediate and corrective action to stop the conduct, address its effects, and prevent recurrence without implementing a formal resolution process and its subsequent determination of a policy violation. An informal resolution process may also include a remedies-based process (mediation), which allows both participants to come to a mutual agreement regarding the resolution of the complaint.

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

such a process would be appropriate and all participants agree to participate. The informal resolution process will never be used to resolve allegations of sexual assault.

The participants in any informal resolution process will not be required to interact with each other directly. Instead, the Title IX Coordinator or designee will arrange for or facilitate a remedies-based process or other form of mediation between the involved participants who are in different rooms. Once an informal resolution process is complete, both participants will be notified simultaneously/ contemporaneously (to the greatest extent possible, and consistent with FERPA or other applicable law) of the resolution.

H. Formal Resolution Process

To file a formal complaint and begin the formal resolution process, the reporting participant must submit an initial, written statement detailing the allegations of misconduct. This statement is the first opportunity for the reporting participant to describe the allegations against the responding participant. The signed complaint initiates the formal process and is forwarded to the investigator(s). The statement should include the name(s) of the accused, the date and location of the alleged sexual misconduct, and the details of the alleged misconduct. This statement should provide details about the facts surrounding the alleged sexual misconduct. The statement must be signed by the reporting participant.

The responding participant shall be given written notice when a formal complaint has been filed against them. Notice that a formal complaint has been filed against a responding participant will be provided to that participant in by the Title IX Coordinator or designee. At this meeting the Title IX Coordinator will discuss the nature of the complaint, review this policy, and give the responding participant a copy of the relevant policies. The responding participant may provide a written response to the formal complaint. This statement will be submitted to the investigator(s) and serves as an opportunity to respond to allegations made by the reporting participant. This statement should provide as much detail as possible about the facts surrounding the alleged misconduct and must be signed by the responding participant.

I. Investigation

The formal resolution process includes a prompt, thorough, impartial, and fair investigation into the allegations. Throughout the investigation and process, participants will be treated fairly and equitably.

The Title IX Coordinator will assign an investigator(s) who has been trained in the investigation of, and other issues related to, sexual discrimination, sexual misconduct, and interpersonal violence. The investigator(s) shall not have a conflict of interest or bias for or against any participants involved in the potential policy violation. The investigator(s) will undertake an investigation for the purposes of determining whether the responding participant is responsible for

the alleged violation(s) of the policy and assign sanctions and remedies in coordination with the Title IX Coordinator and other college representatives.

It is the responsibility of the investigator(s) to gather the evidence relevant to the formal complaint and the facts raised in the participant's statements, to the extent reasonably possible. Participants and witnesses should make themselves available to the investigator(s) and can provide information they believe relevant to the investigators. The scope of the investigation will not necessarily be limited to information provided by the participants or the violations outlined in the formal complaint. Austin College expects all participants to act with integrity and honesty. Participants and witnesses who refuse to cooperate with the investigator(s) in the investigation(s) may face disciplinary action for their refusal to cooperate. During the investigation, the investigator(s) may utilize some or all of the procedure below, in whatever order the investigator(s) deems most appropriate.

- **Document Review:** The investigator(s) will review the statements and all supporting material referenced. The investigator(s) will then attempt to obtain any documents or other materials deemed relevant to the investigation. Any documents or information deemed to be material to the findings regarding the formal complaint or any other violations will be disclosed to both reporting and responding participant for comment or rebuttal.
- **Participant interviews:** The investigator(s) will interview the reporting participant and responding participant separately. These meetings provide opportunities for the participants to discuss their recollection of the event(s) in question, supplement any written statements previously submitted, voice concerns, and work with the investigator(s) to determine what information may be helpful in the investigation of the allegation(s). Participants may also discuss the impact that this experience has had on them. The investigator(s) may interview the participants more than once, as necessary.
- **Witness Interviews:** The investigator(s) will attempt to interview any witnesses identified by the participants that the investigator(s) deems to be relevant to the resolution of the formal complaint. The investigator(s) may also interview any other persons which they find to be potentially relevant to the complaint. Prior to being interviewed, witnesses will be required to sign and abide by a confidentiality and non-retaliation agreement. The witnesses are expected to refrain from any retaliatory conduct against the participants or any witnesses in the matter and may be responsible for any retaliation by persons affiliated with them (i.e., a friend or family member). The investigator(s) will employ best efforts to interview relevant witnesses who are no longer on campus, attempting to contact them via phone or internet.
- **Expert Witnesses:** The investigator(s) may consult with any experts they deem necessary and appropriate to the determination of the facts of the complaint. An expert witness could be consulted to review or provide a professional opinion regarding evidence discovered in the investigation.

J. Evidence

The investigation is intended to determine if this policy has been violated, without the formalities associated with rules and procedures specifically designed by lawmakers to manage courtroom litigation. Students and employees can address issues and present documents to the investigator(s) without concerns about admissibility. The investigator(s) determines what issues raised and documents presented are relevant and probative of whether the alleged conduct occurred. Then, in the interest of fairness, that information will be disclosed to the other participant in the resolution process. Additional information about specific types of evidence is included below.

- **Sexual History:** The sexual history of the reporting and responding participants will not be used in determining whether the alleged misconduct occurred. Prior consensual sexual activity between the two participants will not be considered in the current pending formal complaint. Consent to one sexual act does not constitute consent for another sexual act.
- **Medical and Counseling Documents:** The use of medical or counseling documents in the resolution process is not required. Medical and counseling documents are privileged and confidential documents that students or employees will **never** be required to disclose in this process. “Privileged” means that these documents cannot be shared with anyone other than the treating professional unless the patient agrees to disclosure. Participants should be aware that there are legal implications to agreeing to produce privileged documents. Participants are encouraged to seek advice from a knowledgeable source about the possible consequences of releasing this information. All information submitted to the investigator(s) will be included in the report and made available to the other participant. Investigator(s) will attempt to remove unnecessary identifying information, such as social security numbers, prior to inclusion in the report. A participant who, after due consideration, believes that their own medical or counseling documents would be helpful in determining whether sexual misconduct occurred, has several options for voluntarily presenting this information as described below.
 - Participants can voluntarily decide to present their own medical or counseling documents to the investigator(s) as part of the documents which they would like to have the investigator(s) consider in conducting the investigation. If a participant decides to produce such documents, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.
 - On occasion, the investigator(s) may ask a participant to voluntarily provide these documents for consideration while conducting the investigation. The participant is under **no obligation** to provide this information and may simply say “no” to this request. Such refusal is completely acceptable. Prior to responding to such a request, a participant is encouraged to consult with appropriate authorities about the implications of agreeing to or denying the request. If a participant does decide to produce such documents, they must be produced in

their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.

- The investigator(s) may ask a participant to voluntarily provide a verification of therapeutic or medical services to confirm that such treatment occurred, without providing any details regarding that treatment. On rare occasions, a person may be in possession of the medical or counseling documents of another participant or witness. Such documents can only be presented to the investigator(s) under the following circumstances: (i) the person can show that the documents are relevant to the pending formal complaint, (ii) the person can document or otherwise prove that the documents were legally obtained, and (iii) the documents can be authenticated. Failure to meet any of these conditions means the documents will not be considered in the determination regarding the alleged misconduct.

K. Investigation Report

Once the investigation has been completed, the investigator(s) will evaluate the information obtained during the process. The investigator(s) will prepare a report summarizing and analyzing the relevant facts received through the investigation, noting any supporting documentation or statements. The investigator(s) may draw conclusions regarding the credibility of all testimony and the reliability of documentation. The reporting and responding participants will be allowed to review the investigation report prior to the issuance of a finding. Review of the investigation report must be done in the presence of the Title IX Coordinator or designee. The participants cannot duplicate or remove the investigation report from the premises under any circumstance.

L. Participant Final Statement(s)

After reviewing the investigation report, the reporting and responding participants may provide a final rebuttal statement, documents, or other new information regarding the sources of potentially relevant information and witnesses in writing to the investigator(s) within 72 hours of their review. Any information that is submitted will be made available to the other participant for review.

M. Complaint Withdrawal

Prior to the issuance of a finding(s), the reporting participant may withdraw the complaint. Withdrawal of the complaint will, under most circumstances, end the formal resolution process for that complaint. Once a complaint has been withdrawn, it cannot be filed again by the reporting participant within this process. Austin College reserves the right to move forward with the complaint, even if the reporting participant decides to withdraw it, in order to protect the interests and safety of the Austin College community.

N. Acceptance of Responsibility

Prior to the issuance of a finding(s), the responding participant may accept responsibility for the misconduct alleged in the formal complaint. This acceptance, under most circumstances, will end the formal resolution process and the matter will be handled under the administrative agreement process defined herein.

O. Finding(s)

Upon completion of the investigation, the investigator(s) will issue findings. The decision will be made on the preponderance of evidence standard – that is whether the facts presented in the investigation report support a finding that is ***more likely than not*** that college policy was violated. Under ordinary circumstances, the investigator's findings will be issued in writing within 10 days of the completion of the investigation unless the College determines in its discretion that more time is required, in which case the participants will be notified of the need for an extension of the 10-day period. The Title IX Coordinator or designee will provide periodic updates to the participants as they deem appropriate.

The investigator(s) may issue one of the following findings to a formal complaint.

- A finding that a college policy was violated.
- A finding that a college policy was not violated as there is insufficient information to substantiate the finding of a violation.
- A finding that a college policy was not violated.

P. Sanction(s)

If a participant is found in violation of a college policy, sanctions will be determined by the investigator(s) in coordination with the Title IX Coordinator and other college representatives deem appropriate by the Title IX under the circumstances based on a number of considerations. Such considerations may include: severity, persistence, or pervasiveness of the policy violation; nature of the policy violation, including whether the policy violation included violence; impact on the reporting participant; impact on the responding participant; impact or implications of the policy violation on the larger Austin College community; prior misconduct by the responding participant, including the responding participant's relevant prior disciplinary history at the College; whether the responding participant accepts responsibility for the policy violation; maintenance of a safe, nondiscriminatory, and respectful environment conducive to learning; and any other mitigating, aggravating, or compelling factors.

Possible sanctions include one or more of the following:

- Expulsion
- Suspension
- Probation
- Educational sanctions
- Revocation or withholding of admission or degree pending completion of other sanctions

- No-contact orders
- Time and place restrictions or bans
- Housing restrictions
- Extension of requirements used as interim measures;
- Community service
- Loss of privileges
- Notation in permanent record
- Sanctions withheld, such as additional sanctions if deadlines for sanctions are not met
- Restorative justice requirement
- Specific sanctions that must be met before resuming status at Austin College
- Referrals for assessment, such as counseling or medical assessment
- Written warning or reprimand
- Oral warning or reprimand
- Termination of employment
- Other sanctions deemed appropriate by the Title IX Coordinator or designee.

Q. Written Notification

Once findings and sanctions, if appropriate, are issued by the investigator(s), the Title IX Coordinator will notify the reporting and responding participants of the outcome simultaneously (to the extent possible). Each participant will meet with the Title IX Coordinator or designee separately to receive a copy of the finding(s) and sanction(s), referencing the supporting information relied upon from the investigation report. Under federal privacy laws, the final investigation report, statements of one participant that are shared with another participant in the resolution process, and any documents prepared by the College in relation to this incident, constitute education records which may not be disclosed outside of the resolution process, except as may be required by law.

Any sanctions will take effect immediately. Should a student submit an appeal, the Title IX Coordinator has the discretion to allow that participant to complete pending coursework remotely, if deemed appropriate by the faculty member(s) of record, during the appeal process. Graduation, study abroad, internships/externships, etc. do not in and of themselves constitute exigent circumstances, and students may be barred from participating in those activities during an appeal. In cases where the appeal results in reinstatement to the College or college employment or resumption of privileges, all reasonable attempts will be made to restore the student/employee to his or her prior status.

R. Appeal Process

Once written notification of the finding(s) and sanction(s), if appropriate, has been issued, reporting and responding participants have the right to submit an appeal. Appeals may be submitted solely upon the following three grounds:

- allegations that the investigator(s) deviated from the investigation and resolution process outlined in the policy in a way that substantially altered the outcomes of the case;

- substantive new evidence or information that was not available or known to the participant during the investigation process and that is sufficient to alter a decision; or
- a claim that the sanction is disproportionate to the violation.

Appeals must be submitted in writing to the Title IX Coordinator within 7 days of the participants receiving written notice of finding(s) and sanction(s). Any information that is submitted will be made available to the other participant for review. The other participant may submit a rebuttal of the appeal in writing to the Title IX Coordinator within 7 days of receiving the appeal information.

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

- Appeals addressing deviation from the investigation and resolution process in a way that substantially altered the outcomes of the case shall be referred to an alternate investigator(s) for review and decision making.
- Appeals providing substantive new evidence, which is information that was not available or known during the investigation process and that seems sufficient to alter a decision shall be referred to the original investigator(s) for consideration and determination of a finding based on the new information.
- Appeals of a sanction being disproportionate to the violation shall be assigned to the following appeals for review and decision making:
 - The Faculty Hearing Committee or designee if the responding participant is a faculty member,
 - The Vice President for Business Affairs or designee if the responding participant is a staff member,
 - The Vice President for Student Affairs or designee if the responding participant is a student, or
 - An appropriate appeals agent as determined by the Title IX Coordinator if the responding participant is not a member of the groups listed above.

The Title IX Coordinator or designee will notify the participants simultaneously, to the extent possible, in writing of the appeal agent's decision. The College will seek to complete the appeals process within 15 days unless the College determines in its discretion that more time is required, in which case the participants will be notified of the need for an extension of the 15-day period. The College will provide periodic updates as it deems appropriate.

Finding and sanction decisions made by appeal agent are final.