

Austin College Sexual Misconduct Policy

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

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0.1 – Introduction

Congress passed the Higher Education Amendments in 1972, and included within them was Title IX, which states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” Since 1972, additional federal and Texas state laws and regulations have been adopted to offer further protection to those in higher education (i.e., students, employees, and third parties) from discrimination and harassment based on a person’s sex or gender. Austin College is committed to establishing an environment free of such discrimination and prohibits such acts. This policy has been updated to substantially comply with the Department of Education’s August 14, 2020 Title IX Regulations, & Texas laws H.B. 1735, S.B. 212, & H.B. 449.

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

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

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

U.S. Department of Education 1999 Bryan Street, Suite 1620
Dallas, TX 75201

Telephone: 214-661-9600

FAX: 214-661-9687; TTD: 877-521-2172

Email: OCR.Dallas@ed.gov

0.2 – Notice of Non-Discrimination

Austin College is committed to equal opportunity and does not discriminate on the basis of age, color, disability, national origin, race, religion, sex, gender, gender identity, sexual orientation, citizenship status, genetic information, status as a veteran, or any other characteristic that is protected by applicable state or federal law in its operations, employment opportunities, educational programs, and related activities. Austin College is committed to providing individuals with disabilities equal access to the process outline in this policy. If you need an accommodation in the process, please consult with the Title IX Coordinator.

The Vice President for Student Affairs has been designated to handle bullying, discrimination, harassment or retaliation 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

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

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

The New Regulations address this conflict: Section 106.45(b)(3)(i) (“The Recipient must investigate the allegations in a formal complaint. If the conduct alleged by the complainant would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the Recipient’s education program or activity, or did not occur against a person in the United States, then the Recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; **such a dismissal does not preclude action under another provision of the Recipient code of conduct.**”)

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

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

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

Date of Board Approval:

0.4 - Record Keeping

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

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

(B) Any appeal and the result therefrom;

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

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

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

0.5 – Mandatory Training

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

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

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

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

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

Link to training material:

<https://www.austincollege.edu/campus-life/sexual-misconduct/title-ix-training/>

1.0 – Sexual Misconduct Policy

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

1.1(a) – Scope of Title IX Policy

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

1.1(b) – Scope of Non-Title IX Policy

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

1.2 - Prohibited Misconduct Defined

Conduct that is prohibited and encompassed by this policy includes sexual harassment, sex and gender discrimination, sexual assault, rape, stalking, and relationship abuse (including domestic and dating violence). These acts are also a violation of federal and state law (including Title IX, Title VII, the 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 Formal Complaint, regardless of whether the alleged misconduct is also being pursued through the criminal justice system. Acts of harassment or sex- and gender-based discrimination may vary in severity and include the following categories:

1.21 - Sexual Assault

Sexual assault means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program:

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

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

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

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

1.22(a) – Title IX Sexual Harassment

Sexual Harassment means unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Austin College's educational Program or Activity.

1.22(b) – Non-Title IX Sexual Harassment

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 of Austin College.

Examples of this type of harassment may be: unwanted sexual advances that may take the form of inappropriate sexual or suggestive comments, sounds or jokes; unsolicited touching or fondling.

1.23 - Quid Pro Quo

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

1.24 - Dating Violence

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

1.25 - Domestic Violence

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

1.26 - Stalking

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

For guidance purposes regarding this definition:

- (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. (Citation: 34 CFR 668.46)

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

1.27 - Retaliation

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

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

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

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

1.28 - 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 the Non-Title IX Sexual Misconduct 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.

1.29(a) 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 may result in a separate disciplinary action regarding that conduct. Please note that filing a report or providing information which a participant or witness genuinely believes is accurate, but which is ultimately dismissed due to insufficient evidence or found to be untrue, does not constitute the intentional presentation of false information.

1.29(b) Violation of Supportive Measures

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

1.3 - Process Definitions & Provisions

1.31 - Academic Freedom

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

1.32 - Administrative Leave

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

1.33 – Confidentiality

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

1.34 – Consent

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

1.34.1 - When Consent Cannot be Obtained

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

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

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

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

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

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

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

1.35 - Emergency Removal

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

1.36 - Parental Notification

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.

1.37 - Process Participants

1.37.1 - Title IX Coordinator

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

1.37.2 - Reporting Participant

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

1.37.3 - Complainant

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

1.37.4 - Respondent

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

1.37.5 - Witness

The reporting and responding participants have the right to identify any individuals who may be witnesses to the conduct alleged in a formal complaint. Participants may provide an explanation the witness's relevance to this investigation at the time the

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

1.37.6 - Party Advisor

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

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

All party advisors are subject to the same campus rules, whether or not they are attorneys. Party advisors who step out of their role or otherwise violate this policy during the campus resolution process will be subject to removal as a party advisor. The College expects the party advisors to adjust their schedules to allow them to attend College meetings, interviews, or other necessary events when scheduled. The College does not typically change such scheduled meetings to accommodate a party advisor'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 party advisor. Participants and the party advisor must provide timely notice of a change in party advisors to the Title IX Coordinator. Prior to attending any interviews, the party advisor will be required to agree to confidentiality/non-retaliation, agreeing not to disclose or discuss anything relating to the formal report with anyone other than those authorized to see or hear such information under this process. A party's advisor may choose to withdraw from their role during the process for any reason. A party advisor must provide notice to the Title IX Coordinator when they withdraw from their role.

1.37.7 - Process Advisor

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

1.37.8 - Investigator

The Individual assigned by the Title IX Coordinator to investigate a Formal Complaint of Sexual Misconduct. These individuals will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The Title IX Office will ensure that all investigators receive training on the definition of sexual harassment in § 106.30, the scope of Austin College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Investigators have received training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Materials used to train these individuals do not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

1.37.9 - Decision Maker

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

1.37.10 - Clerk

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

1.38 - Relevant Evidence

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

1) Relevant Evidence is defined as evidence:

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

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

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

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

1.39 – Student Amnesty

Students may be concerned about reporting sexual misconduct believing that their own behavior might subject them to disciplinary action (e.g., if a reporting participant or witness is underage and was using alcohol or drugs at the time of the incident).

Witnesses and reporting participants should be assured that the focus in matters of sexual misconduct is always on the reported behavior, not on whether the witness or reporting participant was using alcohol or drugs at the time. Individuals are encouraged to come forward and report such conduct regardless of the surrounding circumstances. In situations involving allegations of sexual misconduct, Austin College will seek to make the sexual misconduct allegation the primary focus of any investigation or disciplinary action. The College may not pursue disciplinary action against reporting participants, witnesses or a third party for disclosure of their own personal consumption

of alcohol or drugs at or near the time of the incident provided that any such violation did not harm or place the health and safety of any other person at risk. It should be noted that the use of alcohol or drugs does not excuse sexual misconduct and a person who has been incapacitated through the use of alcohol or drugs (or by any other means) cannot give consent to sexual activity.

1.4 – Reporting Sexual Misconduct

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

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

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

Title IX Coordinator

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

Deputy Title IX Coordinator

Jake Sapp
Compliance Officer
Administration Building, Rm 216
900 N. Grand Ave., STE 6I
Sherman, TX 75090
Telephone: 903.813.2432
Email: jsapp@austincollege.edu

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

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

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

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

Reports of Sexual Harassment must be made to the Title IX Coordinator &/or the Deputy Title IX Coordinator to trigger a response by the College. Reports to anyone other than the Title IX Coordinator & the Deputy Title IX Coordinator does not qualify Austin College as having Actual Knowledge of Sexual Misconduct. Submitting a Report of Sexual Misconduct does not guarantee any particular result. Supportive Measures are available for the reporter at the Coordinator's discretion, with or without the filing of a Formal Complaint.

1.41 - Student & Third-Party Reports

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

- 1) In person or through mail to the Title IX Coordinator, Melanie Oelfke, 900 N. Grand Ave., STE 6I Sherman, TX 75090.
- 2) Through email to the Title IX Coordinator, Moelfke@austincollege.edu
- 3) Over the phone to the Title IX Coordinator, 903-813-2433
- 4) Online non-anonymously through the Sexual Misconduct Communication Form, available on Austin College's Title IX webpage & through this link:
<https://hopper.austincollege.edu/hlive/webhopper?TOKENIDX=6239131376&SS=1&AP P=ST&CONSTITUENCY=WBST>
- 5) Online anonymously through this link:
<https://www.intouchwebsite.com/index.asp?Lid=1&Cid=69865>
- 6) To a Limited Reporter Employee (Section 1.42.43), with the individual understanding that the employee must report at the minimum the type of harassment disclosed (the employee may give more information if students give permission to employee).
- 7) To a non-Limited Reporter Employee (Section 1.42.1), with the student understanding that the employee must report all information non-anonymously to the Title IX Coordinator.
- 8) To a Student Employee Resident Assistant &/or FSL with the student understanding that the Student Employee has the obligation to report all information non-anonymously to the Title IX Coordinator.

1.42 - Employee Reports (All Faculty & Staff)

1.42.1 Non-Confidential Employees

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

1.42.2 Exceptions to the Employee Reporting Requirement

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

1.42.3 Limited Reporter Confidential Employees

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

Austin College Counselors	John Williams	Lenora Hatch
Counseling Services	College Chaplain	Medical Professional
Adams Center	Wynne Chapel	Adams Center
903.813.2247	903.813.2220	903.813.2247

1.42.4 Employee Failure to Report or False Report

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

1.43 - 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 Austin College's community, even when the incident takes place after the end of the semester.

1.5 - Supportive Measures

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

Academic Supportive measures will be coordinated with and communicated to the faculty member(s) of record and the Academic (divisional) Dean or the Vice President for Academic Affairs. Supportive measures will be confirmed in writing.

Supportive measures may include:

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

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

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

1.6 - Formal Complaint

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator (in a Coordinator Initiated Complaint) alleging sexual misconduct against a respondent and requesting that Austin College investigate the allegation of sexual harassment. **At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of Austin College.** 34 C.F.R. 106.30(a) A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in Section 1.41 of this policy. The Formal Complaint should contain all known details about the allegations of misconduct including: date & time, location, parties, what happened, witnesses, & any other information relevant to the complaint.

Following the submission to the Title IX Coordinator or their designee of a signed Formal Complaint:

- 1) The Title IX Office will send out a Notice of Allegations to all known parties.
- 2) A trained college designee will review the formal complaint and determine what allegations, if any, must be dismissed. This dismissal may be appealed by either party using the appeal process outlined in section 1.9 of this policy, or may be addressed through the Non-Title IX process.
- 3) Any surviving Title IX allegations may then be resolved through either the Formal or Informal resolution process, as appropriate.

1.61 - Notice of Allegations

Upon receipt of a formal complaint, the Title IX Office will provide the following written notice to the parties who are known:

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

in the initial notice, the Investigator will provide notice of the additional allegations to the parties whose identities are known;

G) The respondent will have a minimum of five days to review the allegations and prepare a response before any initial interview.

1.62 – Initial Assessment

1.62.1 - Mandatory Dismissal

Upon the receipt of a formal complaint, a trained college designee that otherwise has no involvement in the process will review the listed information and make a determination regarding whether the Formal Complaint must be dismissed or may continue through the Title IX process. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy even if proved, did not occur in Austin College's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of Austin College's code of conduct if applicable. If there is more than one allegation of misconduct, the trained college designee will make a determination as to each allegation. If any or all allegations in a Formal Complaint are dismissed, both parties will receive notice of the decision and an explanation for the decision. The dismissal of a Formal Complaint may be appealed by either party.

1.62.2 - Discretionary Dismissal / Complaint Withdraw

Austin College's Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by Austin College; or specific circumstances prevent Austin College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. If a Formal Complaint is dismissed both parties will receive notice of the decision and an explanation for the decision.

Specific Circumstances meriting discretionary dismissal are:

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

1.62.3 - Consolidation of Complaints

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

1.7 - Informal Resolution Process

Where appropriate, the informal resolution process can be used to resolve allegations of sexual misconduct or interpersonal violence by taking immediate and corrective action to stop the conduct, address its effects, and prevent recurrence without implementing a formal resolution process 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 not be used to resolve a Formal Complaint alleging that an employee sexually harassed a student.

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

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

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

1.71 - Administrative Agreement

During the Informal Resolution, the responding participant may elect to accept responsibility for the alleged policy violation through an Administrative Agreement, bringing an end to the Resolution 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.

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

1.8 – Formal Resolution Process

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

The Title IX Formal Resolution Process utilizes the required Live Hearing with Cross Examination performed by the Party Advisor in front of a Decision Maker who is not the investigator. The Non-Title IX Process utilizes the Investigator as the decision maker and does not include a live hearing or cross examination.

1.8(a) Title IX Formal Resolution Process

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

- 1) An investigation to gather all relevant evidence.
- 2) The publication of an Investigative Report. Both parties & their advisors are emailed the Investigative Report & have 10 days to submit written responses to the Investigator.
- 3) The Live Hearing Decision Maker reviews the Investigative report and any responses from any party before the Live Hearing.
- 4) A Live Hearing where both party advisors may ask any party or witness relevant cross examination questions as determined by this policy & enforced by the Decision Maker.
- 5) The Publication of a Determination Regarding Responsibility which includes the rational and an outline of any sanctions and/or remedies imposed by Austin College.

1.8(b) Non-Title IX Formal Resolution Process

- 1) An investigation to gather all relevant evidence.
- 2) The publication of an Initial Investigative Report. Both parties & their advisors are emailed the Investigative Report & have 10 days to submit written responses to the Investigator.
- 3) The Investigator conducts any required follow up interviews or discussions based on party responses to Investigative report.
- 4) The Investigator publishes a Determination Regarding Responsibility which includes the rational for each decision.
- 5) The Title IX Coordinator will, after reviewing the investigative report, will assign sanctions and/or remedies as they deem appropriate.

1.81 - Investigation of a Formal Complaint

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

1.81.1 Investigation Requirements:

- 1) It is the responsibility of the investigator(s) to gather the evidence relevant to the formal complaint and the facts raised in the participant's statements, provided that the Investigator cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the Investigator obtains that party's voluntary, written consent to do so. Participants should make themselves available to the investigator(s) and can provide information they believe relevant to the investigators.
- 2) Both Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- 3) The Title IX Office will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- 4) The Investigator will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. Austin College will not limit either party's choice or presence of advisor in any meeting or grievance proceeding. During the Investigation, advisors may not advocate or present on behalf of the participant, they may only confer quietly with their participant as necessary, as long as it does not disrupt the investigation interview. This rule applies equally to both the complainant and the respondent.
- 5) The Title IX Office &/or the assigned investigator will provide to a party & their advisor whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all, investigative interviews, with sufficient time for the party to prepare to participate. Sufficient time for the purpose of an interview under this section is at least 5 days.

1.81.2 - Investigative Report

6) After all initial interviews are completed & relevant evidence has been collected, the Investigator will publish the Investigative Report which contains the evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which Austin College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

1.81.3 - Parties Review of & Response to Report

7) The Investigative Report will then be submitted electronically to both parties and their advisors. Both parties will have at least ten days to review and respond to the Investigative Report. During this time the parties may introduce new relevant evidence to the investigator that was not known during the prior interviews.

8) In the Title IX Formal Resolution process, the Investigative Report and the party responses to it will then be sent to the Decision maker for review prior to the Live Hearing.

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

1.82 - Second Assessment

1.82.1 - Mandatory Dismissal

After the Investigative Report is published to both parties & their advisors, a trained college designee will review the listed information and make a determination regarding whether the Formal Complaint must be dismissed or may continue through the process. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy even if proved, did not occur in Austin College's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of Austin College's code of conduct if applicable. If there is more than one allegation of misconduct, the trained college designee will make a determination as to each allegation. If any or all allegations in a Formal Complaint are dismissed, both parties will receive notice of the decision and an explanation for the decision. The dismissal of a Formal Complaint may be appealed by either party

1.82.2 - Discretionary Dismissal / Complaint Withdraw

Austin College's Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the

formal complaint or any allegations therein; the respondent is no longer enrolled or employed by Austin College; or specific circumstances prevent Austin College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. If a Formal Complaint is dismissed both parties will receive notice of the decision and an explanation for the decision.

Specific Circumstances meriting discretionary dismissal are:

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

1.83 – Live Hearing (Title IX Only)

1.83.1 - Digital Hearing Request

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

1.83.2 - Cross Examination

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

1.83.3 - Party Advisor

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

1.83.4 - Decision Maker Determines Relevant Evidence

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is

relevant and explain any decision to exclude a question as not relevant. This determination will be made in real time; cross exam questions may not be approved as relevant or not relevant before the hearing. When the Party Advisor objects to the Decision Makers ruling on Relevance, they may make a brief statement to the Decision Maker as to why the question is relevant and doesn't call for privileged information or non-relevant sexual behavior. The Decision Maker will either allow the question or rule it as not relevant.

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

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

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

1.83.6 - Rules of Decorum

During the Live Hearing, the Clerk &/or Decisionmaker(s) will enforce rules of decorum. Parties and their Advisors are forbidden from badgering the other party or any witness. Badgering includes yelling at, harassing, or asking the same irrelevant question multiple times. The Clerk will notify the party or their advisor when they are badgering the witness and will ask the party or advisor to conform their question asking to an appropriate, non-badgering manner.

1.84 - Determination Regarding Responsibility

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

2) The written determination must include—

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

(B) A description of the procedural steps taken from the Title IX Office of the formal complaint through the determination, including any notifications to the parties, interviews

with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of Austin College's Sexual Misconduct policy to the facts;

(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Austin College imposes on the respondent, and whether remedies designed to restore or preserve equal access to Austin College's education program or activity will be provided by the Title IX Office to the complainant; and

(F) Austin College's procedures and permissible bases for the complainant and respondent to appeal. (described below)

(iii) The Title IX Office must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that Title IX Office provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(iv) The Title IX Coordinator is responsible for effective implementation of any remedies.

1.85 - Sanctions

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

Possible sanctions include one or more of the following:

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

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

1.85.1 Student Withdrawal or Graduation Pending Disciplinary Charges

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

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

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

1.9 - Appeals

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

1.91 – Grounds for Appeal

Appeals may be submitted solely upon the following four grounds:

- 1) **Procedural Irregularity** that affected the outcome of the matter;
- 2) **New Evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- 3) **Conflict of Interest/Bias**
The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of Interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- 4) **Sanction is Disproportionate to the Violation**

1.92 – Appeal Process

- 1) Appeals must be submitted in writing to the Title IX Coordinator within 7 days of the participants receiving the Decision Regarding Responsibility.
- 2) Any information that is submitted will be made available to the other participant for review. The other participant may submit a rebuttal of the appeal in writing to the Title IX Coordinator within 7 days of receiving the appeal information.
- 3) Upon receiving an appeal and rebuttal, if one is submitted, the Title IX Coordinator will refer it to the appropriate appeal agent for review and final decision making.
 - Appeals addressing procedural Irregularities in the investigation and resolution process in a way that substantially altered the outcomes of the case shall be referred to an alternate investigator(s) & or decision maker(s) for review and decision making.
 - Appeals providing substantive new evidence, which is information that was not reasonably available at the time of the determination regarding responsibility or dismissal was made & that could affect the outcome of the matter shall be referred to an alternate investigator(s) & or decision maker(s) for consideration and determination of a finding based on the new information.

- Appeals alleging a Conflict of Interest/Bias by the Title IX Coordinator, Investigator, or decision maker for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter shall be referred to an alternate investigator(s) & or decision maker(s) for review and decision making.
- Appeals alleging that the sanction is disproportionate to the violation shall be assigned to the following appellate agents for review & decision making:
 - a) The Faculty Hearing Committee or designee if the responding participant is a faculty member,
 - b) The Vice President for Business Affairs or designee if the responding participant is a staff member,
 - c) The Vice President for Student Affairs or designee if the responding participant is a student, or
 - d) An appropriate appeals agent as determined by the Title IX Coordinator if the responding participant is not a member of the groups listed above.

4) The College will seek to complete the appeals process within 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.

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

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