

# 400 COMPLAINTS ALLEGING SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, AND STALKING

## 400 Complaints Alleging Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking

### 1. General Restatement of Policy and Conduct Covered by this Procedure

It is the policy of San Jacinto College to provide a campus environment free from Sexual Misconduct. Procedure 400 implements the College's Sexual Misconduct Policy and Procedure (Board Policy III.3006.D (<https://www.sanjac.edu/about/policies-procedures/III-3006-D-Sexual-Misconduct.pdf>) and Administrative Procedure III.3006.D.a (<https://www.sanjac.edu/about/policies-procedures/III-3006-D-a-Allegations-of-Sexual-Misconduct.pdf>)).

College policy prohibits two categories of "Sexual Misconduct": (1) Title IX Sexual Harassment; and (2) Other Inappropriate Conduct.

**1.1 "Title IX Sexual Harassment"** refers to sexual harassment occurring in a College education program or activity in the United States. The term "education program or activity" includes places, programs, events, and circumstances over which the College exercises substantial control over both the alleged perpetrator and the context in which the sexual harassment occurred. The term also applies to any building owned or controlled by a student organization officially recognized by the College. The term "Title IX Sexual Harassment" includes the following:

- a) Harassment by an employee of the College in which the employee conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct ("quid pro quo" harassment);
- b) Unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity; or
- c) "Sexual assault," "dating violence," "domestic violence," or "stalking," as defined in the Glossary of Terms in Section 12 of this Procedure.

**1.2 "Other Inappropriate Conduct"** is an umbrella term that refers to sexual conduct that does not satisfy the definition of "Title IX Sexual Harassment" but that is nonetheless inappropriate in a collegiate environment. "Other Inappropriate Conduct" violates the College's Sexual Misconduct Policy if it occurs on campus or within an education program or activity of the College or if it occurs off-campus but adversely impacts the College's education programs and activities or interferes with a person's ability to participate in or benefit from the College's education programs and activities. Such conduct violates College policy if it is objectively offensive to a reasonable person and the affected individual actually perceived the conduct as harassing or abusive. The term "Other

Inappropriate Conduct" includes, but is not limited to, the following prohibited conduct:

**1.2.1** 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 and interferes with a student's ability to participate in or benefit from educational programs or activities at the College. See Texas Education Code, sec. 51.251(5).

**1.2.2** Unwelcome sex-based advances or propositions; unwelcome requests for sexual favors; unwelcome physical contact or touching of a sexual nature; persistent and unwanted sexual attention; voyeurism; unwelcome sexual gestures; public exposure of one's sexual organs on campus or at an event under the control of the College; displaying obscene materials in a public place on campus; forwarding pornographic or obscene material via email or text to non-consenting recipients; recording or photographing sexual activity or a person's genital area or breast area or from a vantage point that a reasonable person would view as an invasion of personal privacy; and allowing a third party to view consensual sex without the knowledge of the other participant.

**1.2.3** Unwelcome comments of a sexual nature that a reasonable person would view as gratuitous, intimidating, offensive, and/or degrading and that adversely impact an individual's educational environment. The College's definitions are not intended to restrict constitutionally protected speech. In the academic context, including the context of a classroom discussion or preparation of a course assignment, a relevant factor is whether the comments are reasonably related to course content or serve a legitimate pedagogical function.

**1.2.4** Conduct of a sexual nature that is consensual between two or more parties but is nonetheless inappropriate in an educational environment, such as engaging in consensual sexual acts in a campus building or displaying sexually oriented objects or materials in the presence of third parties while on campus.

A glossary of additional definitions used in this Procedure is found in Section 12 below.

The College's Title IX Coordinators are responsible for coordinating the College's response to allegations of sexual harassment and other sexual misconduct. A list of the College's Title IX Coordinators and their contact information is found in Section 4 below and on the College website (<https://www.sanjac.edu/support/personal-support/report-an-incident/>).

### 2. College's Initial Response to a Report of Sexual Misconduct

This Procedure distinguishes between *reporting* allegations of misconduct and *filing* a Formal Complaint of misconduct. A "report" informs the College of an alleged incident of Sexual Misconduct. Any person can make a report. Reporting an allegation does not necessarily result in an investigation or a grievance process under this Procedure. Investigation and adjudication of a report will occur, in most cases, only if the alleged victim of the Sexual Misconduct files a "Formal Complaint." An alleged victim may seek supportive services with or without filing a Formal Complaint.

Promptly after receiving a report of Sexual Misconduct from an employee, student, or any other person, a Title IX Coordinator or designee must contact the alleged victim to discuss the availability of Supportive

Measures, consider the alleged victim's wishes concerning Supportive Measures, and explain the process for filing a Formal Complaint.

A Formal Complaint is a written, signed document asking the College to investigate and adjudicate allegations of Sexual Misconduct. A Formal Complaint is necessary for the College to investigate and adjudicate allegations of Sexual Misconduct through these procedures. A Formal Complaint may be delivered in person or submitted by mail, electronic mail, or via the College's online incident portal ([https://cm.maxient.com/reportingform.php?SanJacCollege&layout\\_id=0](https://cm.maxient.com/reportingform.php?SanJacCollege&layout_id=0)). Although a Formal Complaint may be filed at any time, the College encourages individuals to report their concerns as soon as possible after the alleged incident(s) so that prompt action can be taken to investigate and resolve the complaint. A delay in reporting may result in a loss of evidence or witness availability and, in extreme cases, dismissal of a Formal Complaint.

In response to a report of Sexual Misconduct involving a known alleged victim, the Title IX Coordinator or designee will evaluate the reported allegations to determine whether the allegations, if proven, would constitute Title IX Sexual Harassment or Other Inappropriate Conduct.

If the report alleges Title IX Sexual Harassment, the Title IX Coordinator or designee should provide written notice to the alleged victim of the right to file a Formal Complaint under Section 9 of this Procedure. If the report alleges Other Inappropriate Conduct, the notice should address the right to file a Formal Complaint under Section 10 of this Procedure.

### 3. Mandatory Reporting by Employees

Any employee who, in the course and scope of their employment, observes or receives information regarding an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking that was committed by or against a San Jacinto College student or employee, must promptly report the incident or allegation to one of the College's Title IX Coordinators unless an express exception applies. For further information, see Board Policy III.3006.D and Administrative Procedure III.3006.D.a.

### 4. Reporting Procedures for Students

**4.1 Reporting to a Title IX Coordinator:** Any student or other individual who is not an employee may report Sexual Misconduct or Other Inappropriate Conduct. Reports may be submitted to one of the College's Title IX Coordinators in person or by mail, telephone, electronic email, or online portal ([https://cm.maxient.com/reportingform.php?SanJacCollege&layout\\_id=0](https://cm.maxient.com/reportingform.php?SanJacCollege&layout_id=0)). Submitting a report does not obligate the individual to file a Formal Complaint or to participate in an investigation.

Allegations against students also may be reported to the Compliance & Judicial Affairs Office by calling 281-478-2756. Allegations against employees may be reported to the Human Resources Department by calling 281-998-6115. A complaint against a Title IX Coordinator should be reported to the Vice Chancellor of Fiscal Affairs (281-998-6306).

When an alleged victim (or someone on their behalf) makes a report to a Title IX Coordinator, the Title IX Coordinator will notify the individual in writing of their rights and options, including how to file a Formal Complaint if desired and how to request support services or Supportive Measures. An individual may request support services or Supportive Measures without filing a Formal Complaint.

#### Title IX Coordinators

##### Associate Vice Chancellor of Student Services

Joanna Zimmermann (students)

Co-Lead Title IX Coordinator  
8060 Spencer Highway  
Pasadena, Texas 77505  
[joanna.zimmermann@sjcd.edu](mailto:joanna.zimmermann@sjcd.edu)  
281-476-1863

##### Vice Chancellor, Human Resources, Organizational and Talent Effectiveness

Sandra Ramirez (employees)  
Co-Lead Title IX Coordinator and Equal Opportunity Compliance Officer  
4624 Fairmont Parkway,  
Pasadena, Texas 77504  
[sandra.ramirez@sjcd.edu](mailto:sandra.ramirez@sjcd.edu)  
281-991-2648

#### Title IX Investigators

##### Dean, Student Rights and Responsibilities

Dr. Kara Kennebrew  
8060 Spencer Highway  
Pasadena, Texas 77505  
[kara.kennebrew@sjcd.edu](mailto:kara.kennebrew@sjcd.edu)  
281-478-2756

##### Student Conduct Investigator

Jennifer Ren (students)  
8060 Spencer Highway  
Pasadena, Texas 77505  
[jennifer.ren@sjcd.edu](mailto:jennifer.ren@sjcd.edu)  
281-478-2756

##### Student Conduct Investigator

Jimmy Sims (students)  
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Pasadena, Texas 77505  
[jimmy.sims@sjcd.edu](mailto:jimmy.sims@sjcd.edu)  
281-478-2756

##### Vice President, Human Resources

Vickie Del Bello (employees)  
4620 Fairmont Parkway  
Pasadena, Texas 77504  
[vickie.delbello@sjcd.edu](mailto:vickie.delbello@sjcd.edu)  
281-998-6357

##### Director of Employee Relations

Michelle Walker (employees)  
4620 Fairmont Parkway  
Pasadena, Texas 77504  
[michelle.walker@sjcd.edu](mailto:michelle.walker@sjcd.edu)  
281-998-6421

##### Manager of Employee Relations

Gretchen Rapp (employees)  
4620 Fairmont Parkway  
Pasadena, Texas 77504  
[gretchen.rapp@sjcd.edu](mailto:gretchen.rapp@sjcd.edu) ([gretchen.rapp@sjcd.edu](mailto:gretchen.rapp@sjcd.edu))  
281-998-6314

"Responsible employees" are officials with authority who are vested with the responsibility to implement corrective measures for sexual harassment on behalf of the College. Although the College encourages

individuals to report Sexual Misconduct directly to a Title IX Coordinator, individuals also may make reports to the following employees:

- Chancellor, the Deputy Chancellor and President, Vice Chancellors, Associate Vice Chancellors, Assistant Vice Chancellors, Vice Presidents, Provosts, and Deans
- Registrar
- Faculty and Department Chairs
- Police Department peace officers and supervisors
- Risk Management administrators
- Human Resources administrators
- Athletic Directors and coaches
- Directors and Managers

**4.2 Reports to Law Enforcement:** The reporting party may report a crime in progress by calling 911. If the incident occurred on a San Jacinto College campus, the reporting party may make a report to the San Jacinto College (SJC) Police Department (281-476-9128) or to another police agency with jurisdiction. A police department's geographic jurisdiction will depend on the location of the incident (click here (<https://www.sanjac.edu/student-life/campus-safety/police/>) (<https://www.sanjac.edu/student-life/campus-safety/police/>)) for a list of other police agencies near and around the College's campuses). The SJC police or other police agency may share the report with the College's Title IX Coordinators. Prompt reporting will aid in the preservation of evidence. The decision whether to report to law enforcement belongs to the person(s) who were subjected to the alleged misconduct. They may choose to report an offense to law enforcement or to decline to report a crime to law enforcement. Additionally, regardless of whether the alleged victim files a police report, the individual has a right to file an administrative complaint with the College or to seek support services or Supportive Measures from the College (addressed in Section 6 of this Procedure). An individual may request the assistance of a Title IX Coordinator in making a police report.

**4.3 Evidence Preservation:** Persons who have been subjected to an alleged sexual assault or other Sexual Misconduct are encouraged to go to a hospital for a medical exam or treatment as promptly as possible and to preserve all evidence related to the assault or misconduct, including potential DNA evidence and evidence of bruising or other injuries. The individuals should not wash, shower, or change clothes prior to a medical exam or treatment. Clothing, if removed, should be placed in a paper bag. Evidence of emails and text messages should be preserved.

**4.4 Confidential Reporting:** Confidential reporting opportunities are discussed in Section 7 of this Procedure.

**4.5 Anonymous Reports:** Any person may make an anonymous report to a Title IX Coordinator. However, depending on the facts and circumstances of the anonymous report, the College may be limited in its ability to stop the alleged conduct, collect evidence, or remedy the situation.

**4.6 Formal Complaints:** Formal Complaints should be filed in accordance with Section 9 or Section 10.

**4.7 External Reports:** Any person may contact the Office for Civil Rights to report a violation of Title IX. Office for Civil Rights:

US Department of Education  
1999 Bryan St., Suite 1620  
Dallas, Texas 75201-6810  
214-661-9600

214-661-9587 (fax)

**4.8 Reports against Title IX Coordinator or Chancellor.** A Formal Complaint against a Title IX Coordinator shall be filed directly with the Vice Chancellor of Fiscal Affairs (281-998-6306) who shall take appropriate, prompt action to ensure that the complaint is investigated including, as appropriate, hiring an external investigator, which may be an attorney. The investigation report shall be presented to the Chancellor. This Procedure shall apply to the extent practicable; avoidance of any conflict of interest is paramount.

A Formal Complaint against the Chancellor or any Board member shall be filed with the Board Chairperson. Charges against the Chairperson shall be filed with the Vice Chairperson. The official receiving the charge shall take appropriate, prompt action to ensure that the complaint is investigated including, as appropriate, hiring an external investigator, which may be an attorney. The investigation report shall be presented to the Board of Trustees. This Procedure shall apply to the extent practicable; avoidance of any conflict of interest is paramount.

## 5. Immunity from Discipline; Protection against Retaliation

**5.1 Immunity:** College policy prohibits charges against an individual for Code of Conduct or disciplinary violations that do not involve sex discrimination or sexual misconduct but arise out of the same facts or circumstances as a report or complaint of sex discrimination or sexual misconduct when the purpose of the charge is to interfere with any right or privilege secured by this Procedure or Title IX and its implementing regulations.

To encourage reporting of Sexual Misconduct and Other Inappropriate Conduct, the College may grant immunity (also known as amnesty) from disciplinary action to a student or employee who acts in good faith in reporting an alleged violation, filing a Formal Complaint, or participating in a Grievance Process. For example, students who report that they were a victim of sexual assault will not face disciplinary charges for other Code of Conduct violations, such as underage drinking, that occurred in conjunction with the alleged sexual assault. A person who allegedly engaged in Sexual Misconduct or Other Inappropriate Misconduct may not avoid discipline by reporting his or her own acts of Sexual Misconduct or Other Inappropriate Conduct.

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

**5.2 Protection against Retaliation:** No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this procedure or related policy or law or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this Procedure. The definition of retaliation also applies to acts of intimidation, threats, coercion, or discrimination, including a charge against an individual for Code of Conduct violations that do not involve sexual discrimination or Sexual Misconduct but that arise out of the same facts or circumstances as a report or complaint of sexual discrimination or Sexual Misconduct when the purpose of the charge is to interfere with a right or privilege secured by this Procedure or related policy or law. The following acts are not retaliation:

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

Any student who believes that they have been subjected to retaliation may file a complaint under Complaint Procedure 300 in the Student Handbook (<https://publications.sanjac.edu/student-handbook/>). Any employee who believes that they have been subjected to retaliation may file a complaint under Human Resources Procedure 3-19(A)(2) (<https://www.sanjac.edu/about/policies-procedures/3-19-Employee-Concerns-and-Grievances.pdf>).

## 6. Resources and Assistance and Supportive Measures for Reporting Parties and Respondents

**6.1 Immediate Assistance. Medical Care:** Individuals who have experienced sexual violence are encouraged to seek immediate medical care to obtain treatment or medication and to preserve evidence, including DNA evidence. Visiting a doctor does not obligate the individual to file a complaint with the College or the police. The individual should consider seeking a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) if the incident occurred within the preceding four days. For more information, please see <https://www.texasattorneygeneral.gov/crime-victims/services-> (<https://www.texasattorneygeneral.gov/crime-victims/services-crime-victims/>) crime-victims (<https://www.texasattorneygeneral.gov/crime-victims/services-crime-victims/>). The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

**Counseling Services:** A student who has experienced Sexual Misconduct or Other Inappropriate Conduct may benefit from immediate counseling or psychological care, regardless of whether the individual makes any other type of report. Likewise, a respondent or witness also may desire counseling. A student may obtain psychological support from a private provider at their own expense or from the College's Center for Advising, Career, and Transfer office. Students desiring counseling should contact any Center for Advising, Career, and Transfer office:

Central & Maritime Campuses 281-478-2768

North & Generation Park Campuses 281-459-7192

South Campus 281-922-3444

Faculty and staff may contact the Employee Assistance Program at 713-500-3327.

Community resources available to all individuals are listed at Health Resources (<https://www.sanjac.edu/support/health-support/mental-health-resources/>).

An individual's counseling and medical records are confidential and will not be used by the College in a Grievance Process without the individual's written consent.

**6.2 Support Services and Supportive Measures for Reporting Parties and Respondents.** The College may provide supportive services, protective measures, or accommodations without any fee or charge to a reporting party in connection with the report or filing of a complaint or even if no formal complaint has been filed. Supportive Measures are non-disciplinary, non-punitive individualized services offered when appropriate and reasonably available. After a Formal Complaint has been filed, Supportive Measures also are available to the alleged perpetrator (the "respondent").

Any measures that are disciplinary in nature cannot be implemented until after the conclusion of a Grievance Process (see Sections 9 and 10), unless an emergency removal is appropriate (see Section 6.3). Supportive Measures are designed to restore or preserve access to the individual's education program or activity without unreasonably burdening the other party; protect the safety of all parties and the educational environment; and deter sexual harassment and other sexual misconduct. 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, increased security and monitoring of certain areas of the campus, and other similar measures. Under state law and College Policy, the reporting party and the respondent are entitled to drop a course in which both parties are enrolled without an academic penalty.

The College must maintain as confidential any Supportive Measures provided to the reporting party or respondent, to the extent that maintaining such confidentiality would not impair the College's ability to provide the Supportive Measure. The Title IX Coordinators are responsible for coordinating the effective implementation of Supportive Measures.

**6.3 Emergency Removal or Administrative Leave. Emergency Removal of a Student.** In some circumstances, the College may determine that removal of a student-respondent from campus would be appropriate prior to a determination of responsibility. The College must undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of a student or other campus individual arising from the allegations of misconduct justifies removal, and provide the respondent written notice and an opportunity to challenge the emergency removal. The administration shall send written notice to the student via (i) hand delivery or (ii) electronic mail and first-class US mail. Emergency removal can include removal from a specific activity or temporary suspension from all campuses and activities. A student who is notified of an emergency removal is entitled to a hearing at their request. The request must be in writing and submitted within five school days of the emergency removal. The hearing shall be held within five school days, barring unforeseeable circumstances. The hearing shall be conducted by the senior instructional leader at the campus where the student is enrolled or, if that leader is involved in any way in the underlying charge of misconduct, the hearing shall be conducted by the senior instructional leader from another College campus. An emergency removal will take effect immediately even if the affected student requests a hearing. The purpose of the hearing is not to resolve the underlying charge of misconduct but to determine if removal is justified pending a hearing on the underlying charge.

**Employee Administrative Leave.** In some circumstances, the College may determine that removal of an employee-respondent from campus would



be appropriate prior to a determination of responsibility. Administrative leave can include a temporary reassignment, restrictions on access to a part of campus, or suspension from campus. Administrative leave of an employee must be approved by the Chancellor or the Chancellor's designee. The terms and conditions, including the employee's pay status, shall be in accordance with the College's contract and employment policies.

The provisions relating to emergency removal and administrative leave may not be construed to modify any rights that a student or employee may have under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

## 7. Parties Rights' Regarding Confidentiality

**Confidentiality Generally:** The College desires to be respectful of each person's interest in privacy. Certain laws restrict disclosure of student records and records relating to sexual harassment and sexual assault. See 34 C.F.R. part 99; Texas Education Code § 21.256, § 21.291. However, under state and federal law, most College employees have a duty to report allegations of sexual harassment, sexual assault, dating violence, domestic violence, and stalking to a Title IX Coordinator. Additionally, when a Formal Complaint is initiated, the investigation process may require certain disclosures, including the parties' names, in order to conduct a fair and thorough investigation. The College will share information with individuals only as necessary, which may include investigators, witnesses, the reporting party, the respondent, parties' advisors, decision-makers, appellate officers, College administrators, attorneys, or trustees who have a responsibility to ensure compliance with this Procedure and applicable law.

**Confidential Consultations without Making a Report or Filing a Formal Complaint:** Students may confidentially discuss an incident with a counselor at any of the College's Center for Advising, Career, and Transfer offices without concern that the student's identity will be reported to the Title IX Coordinators or to law enforcement.

Counselors will not report the student's name without the consent of the student. Individuals also may make a confidential report to a community rape crisis center, clergy person, or a health care provider of the student's choice. Community resources are identified at Resource Information (<https://www.sanjac.edu/support/health-support/mental-health-resources/>).

## 8. Reporting Party's Request Not to Investigate

In some instances, a reporting party might decline to file a complaint or participate in an investigation, or they may wish to keep the matter completely confidential or to withdraw a Formal Complaint after it is filed. Because conducting an investigation in such circumstances could go against the alleged victim's wishes, lead to unwanted disclosure of the alleged victim's name and allegations, and/or create the potential for an investigation and adjudication without the alleged victim's participation, the College must weigh the rights, interests, and safety of all parties and the larger campus community. In weighing a request not to investigate, the College will consider whether it would be unreasonable in light of the known circumstances not to investigate, considering the following factors, among others:

1. The seriousness of the alleged conduct;
2. Whether the College has received other reports of a Title IX incident involving the same respondent(s);
3. Whether there is a risk of harm to others; and

4. Any other evidence that the College determines to be relevant to the analysis.

After evaluating these factors, the College's Title IX Coordinator(s) may sign a Formal Complaint against a respondent and, in doing so, will initiate the Grievance Process. In such instances, the complaint is not filed on behalf of a particular reporting party, but, rather, is filed on behalf of the institution so that fact-finding through a fair and neutral process can occur. The Title IX Coordinator(s) must inform the reporting party in writing of the decision whether or not to investigate. If the Title IX Coordinator(s) decide not to investigate based on the reporting party's request not to investigate, the College shall take any steps determined to be necessary to protect the health and safety of the College community in relation to the alleged incident. If the Title IX Coordinator(s) determines that an investigation is necessary, the reporting party is not required to participate.

## 9. Title IX Sexual Harassment Grievance Process

**9.1 Jurisdiction; Application of this Procedure.** Section 9 describes the grievance process for Title IX Sexual Harassment. The College can investigate and adjudicate allegations of Title IX Sexual Harassment only if there is a Formal Complaint on file. A Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment.

A student may file a Formal Complaint against a fellow student, a College employee, or a third party. In addition, a College employee may file a Formal Complaint against a student.

This Section 9 Title IX Grievance Process applies if the following conditions are met:

1. When the alleged victim filed the Formal Complaint, the alleged victim was participating in or attempting to participate in an education program or activity of the College.
2. The alleged conduct involves **all** of the following:
  1. Sex-based
  2. Unwelcome to the alleged victim
  3. Involved at least one of the following:
    - a. "Quid pro quo" harassment by an employee (defined in Section 1.1(a) of this Procedure), *or*
    - b. Sexual assault, *or*
    - c. Domestic violence, *or*
    - d. Dating violence, *or*
    - e. Stalking, *or*
    - f. "Hostile environment" harassment that satisfies **all** of the following (Section 1.1(b) of this Procedure):
      1. Severe, pervasive, and objectively offensive, **and**
      2. So severe, pervasive, and objectively offensive that a reasonable person would be denied equal access to the school's program or activity if they experienced the conduct.
  4. Occurred in an education program or activity of the College in which the College exercised substantial control over both the alleged perpetrator (respondent) and the context of the harassment.
  5. Occurred in the United States.

**9.2 Formal Complaints.** Although individuals may file a Formal Complaint at any time, the College encourages individuals to report their concerns as soon as possible after the alleged incident(s) so that prompt action can be taken to investigate and resolve the complaint. A delay in reporting may result in a loss of evidence or witness availability.

To request an investigation and commence the Grievance Process, the reporting party must submit a written Formal Complaint to a Title IX Coordinator. The written complaint may be delivered in person or submitted by mail, electronic mail, or via an online incident portal ([www.sanjac.edu/incident-report](http://www.sanjac.edu/incident-report) ([https://cm.maxient.com/reportingform.php?SanJacCollege&layout\\_id=0](https://cm.maxient.com/reportingform.php?SanJacCollege&layout_id=0))). The complaint must contain the reporting party's physical or digital signature or otherwise indicate that the reporting party is the person filing the complaint. If the information is available, the reporting party must submit a written statement containing the known details of the alleged conduct that is the subject of the Formal Complaint, including the following:

- Reporting Party's name and contact information;
- Respondent's name;
- Detailed description of the alleged conduct or event that is the basis of the alleged violation under this Procedure;
- Date(s) and location(s) of the alleged occurrence(s);
- Names of any witnesses to the alleged occurrence(s); and
- The resolution or remedy sought.

As stated in Section 8, in instances in which the alleged victim has declined to file a Formal Complaint, the College's Title IX Coordinator(s) may sign a Formal Complaint against a respondent and, in doing so, will initiate the Grievance Process. In such instances, the complaint is not filed on behalf of a particular reporting party, but, rather, is filed on behalf of the institution so that fact-finding through a fair and neutral process can occur. The Title IX Coordinator is not considered a reporting party or a party in such instances. If the Title IX Coordinator prepares a Formal Complaint, the reporting party may, but is not required to, participate in the Grievance Process.

Upon receipt of a Formal Complaint of Title IX Sexual Harassment, a Title IX Coordinator or designee must notify all known parties (alleged victims, or "complainants," and alleged perpetrators, or "respondents") of the allegations in writing as stated in Section 9.4. The notice of allegations must be provided even if the Formal Complaint is potentially subject to dismissal. If the Formal Complaint involves an allegation by or against an employee-respondent, a member of the Human Resources-Employee Relations Department will provide the notice of allegations to the employee-respondent.

### 9.3 Evaluation of the Formal Complaint; Dismissal of Complaints

**9.3.1 Initial Review:** After sending the Notice of Allegations, the Title IX Coordinator or a designee will determine whether the Formal Complaint includes allegations which, if proved, would be Title IX Sexual Harassment. If an employee is a party, the Title IX Coordinators for both students and employees, or their designees, must confer on whether there is jurisdiction. If the Formal Complaint is missing pertinent information necessary to evaluate the College's jurisdiction, such as the location of the incident, the Title IX Coordinator or designee shall provide the complainant a reasonable amount of time to provide supplemental information before deciding that there is no Title IX jurisdiction.

**9.3.2 Mandatory Dismissal:** The College will dismiss a Formal Complaint, and it will not be processed under the Title IX Grievance Process, if the allegations do not satisfy the criteria for describing Title IX Sexual

Harassment. The Title IX Coordinator or designee will then evaluate the Formal Complaint under Section 10 of this Procedure and other policies, procedures, and rules of the College, as warranted.

**9.3.3 Discretionary Dismissal:** The College may dismiss a Formal Complaint for any of the following reasons:

- a. The employee-respondent is no longer employed by the College.
- b. The reporting party requests dismissal in writing (see Section 8).
- c. The student-respondent is no longer enrolled at the College (see Section 9.3.4).
- d. Other circumstances exist that prevent the College from gathering evidence sufficient to reach a determination as to the allegations in the Formal Complaint.

### 9.3.4 Withdrawal of Student-Respondent While Charges are Pending:

If a student-respondent withdraws or graduates from the College after a Formal Complaint is filed, the College may not end the Grievance Process or issue a transcript to the respondent until the College makes a final determination of responsibility. In such instances, the College shall expedite the College's disciplinary process as necessary to accommodate both the respondent's and reporting party's interest in a speedy resolution. Accordingly, the following procedure will be utilized in such circumstances:

- a. If the student-respondent withdraws or graduates after a Grievance Hearing has commenced, but before the decision-maker has issued their ruling on responsibility, the hearing process will continue until the decision-maker issues that ruling.
- b. If the student-respondent withdraws or graduates before commencement of the Grievance Hearing, the process in Section 10 will apply.

**Transcript Notation Rule:** If a student-respondent withdraws prior to the final determination, and upon making a determination of responsibility, the College will make a determination of whether the respondent will be ineligible to reenroll for a non-academic or non-financial reason. If the respondent is ineligible to reenroll for a non-academic or non-financial reason, the College shall include on the respondent's transcript the notation required under 19 Texas Administrative Code 3.30(b).

**9.3.5 Notification of Dismissal:** If the College dismisses a Formal Complaint, the College must provide both parties written notice of the dismissal and the reasons for the dismissal. In cases of mandatory dismissal, the College reserves the right to investigate the matter following other College policies and procedures. The Title IX Coordinator(s) or designee should consider whether the process in Section 10 of this Procedure should be used to address the allegations in the Formal Complaint.

**9.4 Written Notice of Formal Complaint.** The Title IX Coordinator will provide written notice to the parties regarding receipt of the Formal Complaint. The notice of allegations must include, at a minimum:

- Sufficient details known at the time with sufficient time to prepare a response before any initial interview of any party. Sufficient details include the identities of the parties involved in the incident if known, the conduct allegedly constituting Title IX Sexual Harassment, and the date and location of the alleged incident, if known. In most cases, 24 hours will be sufficient after the College provides the notice of

allegations for the parties to prepare a response before any initial interview. A party may request additional time if needed.

- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made after the grievance process.
- Notice that the parties may have an advisor of their choice, who may be an attorney, but is not required to be, and may inspect and review directly related evidence at the end of the investigation.
- Notice that this Procedure prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the College will provide a supplemental written notice of the additional allegations to the parties whose identities are known at that time.

**9.5 Consolidation of Complaints.** The College may consolidate formal complaints by one or more reporting parties against the same respondent or against multiple respondents if the allegations of misconduct arise out of the same facts or circumstances.

## **9.6 Investigations of Formal Complaints Pursuant to the Title IX Grievance Process**

**9.6.1** One or more impartial investigators shall be appointed to conduct the investigation. The Title IX Coordinator will notify the reporting party and the respondent of the name and contact information of the investigator(s). The investigator shall conduct a thorough investigation in light of the allegations at issue and the availability of witnesses.

**9.6.2** The investigator shall provide the respondent a reasonable time to submit a written response to the notice under Section 9.4, typically 10 calendar days, barring unusual circumstances that warrant additional time.

**9.6.3** The College will provide reasonable written notice to a party whose participation is invited or expected of the date, time, location, and purpose of all meetings, investigative interviews, or other proceedings under the Grievance Process. In most cases, 24 hours will be sufficient after the investigator provides notice, but a party may request additional time.

**9.6.4** During the investigation, the burden of proof and gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties. However, the investigator will not collect or consider the following types of evidence: (i) evidence subject to a legally recognized privilege unless the privilege was waived; (ii) a party's medical, psychological, and similar treatment records without the party's voluntary, written consent; or (iii) evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged sexual misconduct or offered to prove consent. The investigator shall interview the reporting party, the respondent, and other individuals determined by the investigator to possess relevant information. However, if a party or witness declines to be interviewed by the investigator or is not available despite multiple attempts to contact the person, the investigation will continue. The reporting party and the respondent each will be permitted to submit documentation or other tangible evidence to the investigator such as documents, emails, text messages, photographs, and recordings. The reporting party and the respondent each may suggest witnesses to interview and questions to ask witnesses; however, the decision whether

to interview and what questions to ask is a matter of professional judgment for the investigator in light of the allegations and the availability of the witnesses or evidence. The investigator will prepare a typed summary of each witness's interview to be included in the record of the investigation.

**9.6.5** During meetings and proceedings under the Title IX Grievance Process, the parties have an equal right to be represented or accompanied by an advisor of their own choosing, including an attorney. Advisors, however, may not actively participate in meetings, interviews, or hearings unless expressly permitted by this Procedure. If a party has an advisor, the party shall provide the name and contact information of the advisor to the investigator and the Title IX Coordinator no later than 10 school days prior to the hearing and state whether the College is authorized to communicate with the advisor and to provide information required by this Procedure to be provided to a party.

**9.6.6** Barring unusual circumstances (e.g., multiple reporting parties and witnesses or the complaint is filed immediately prior to the winter break), the investigation ordinarily will be completed within 60 to 90 calendar days. The investigator shall inform the parties and the Title IX Coordinator if additional time is needed and the reasons why additional time is needed.

**9.6.7** Prior to the completion of the investigation report, the investigator will provide the parties with access to all evidence obtained during the investigation (whether relevant or not), including summaries of the interviews with the parties and other witnesses. The investigation record shall be transmitted to the parties (and their advisors if authorized by the parties) in an electronic format or in a hard copy. Both parties will have 10 calendar days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the investigator. Extensions of time may be granted for good cause, in which case both parties will be entitled to the same extension. Requests for extensions of time must be received by the investigator prior to the deadline.

**9.6.8** The investigator shall consider the parties' submissions, if any, when preparing the investigation report. The completed investigation report will outline the allegations of misconduct, provide a procedural history detailing the steps taken to conduct the investigation, and fairly summarize relevant evidence, including witness statements. The investigator will provide a completed investigation report to the Title IX Coordinator and concurrently to both parties (and to each party's advisor, if any, if consent for disclosure has been provided by the party). The completed investigation report must be provided to the parties at least 10 calendar days prior to the date of the hearing. Additionally, each party shall have a right of access and inspection to the other party's response to the investigation record referenced in Section 9.6.7.

**9.7 Concurrent Criminal or Civil Proceedings.** The College will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to take action on a Formal Complaint. The College has an independent duty to respond to Formal Complaints. At the College's discretion, and in consultation with the relevant police agency or Harris County District Attorney's Office, the College may temporarily delay the investigation or Grievance Process so as not to interfere with criminal justice activities. This determination will be made on a case-by-case basis and will balance the interests of the reporting party, the respondent, and the College.

**9.8 Prior Sexual History.** A reporting party's sexual predisposition or prior sexual behavior is not relevant in any investigation or hearing under

this Procedure except where questions and evidence about a reporting party's prior sexual behavior are offered to prove that someone other than the respondent committed the alleged conduct charged by the reporting party or if the questions or evidence concern specific incidents of the reporting party's prior sexual behavior with the respondent and are offered to prove the reporting party's consent of the alleged conduct.

**9.9 Title IX Grievance Hearings and Appeals.** After completion of the Title IX investigation, the following process will apply to Formal Complaints involving Title IX Sexual Harassment.

**9.9.1 Sexual Misconduct Complaint Hearing Board.** Formal Complaints will be heard by a three-person Hearing Board composed of at least one full-time faculty member and one professional staff member. The third member may be a faculty member or professional staff member. All Board members must receive training as required by applicable law. One Board member shall serve as the chairperson. Board members shall be impartial. Employees who were witnesses to the incident under review or who were involved in the investigation or evaluation of the charges under review shall be ineligible to serve as Board members. Title IX Coordinators may not serve on a Hearing Board.

**9.9.2 Written Notice of the Hearing.** The College will provide at least 10 calendar days written notice to parties of the hearing date (and to a party's advisor when authorized by that party). The notice will provide the date, time, location, and names and titles of the Board members. The notice shall contain a statement of the alleged conduct charges, identify the purpose of the hearing (to determine responsibility for the alleged conduct), state that the respondent is presumed not responsible and that a determination regarding responsibility will be made at the conclusion of the hearing based on a preponderance of the evidence, and identify the range of sanctions available should the respondent be found responsible. The notice shall state that each party may have an advisor of their choice at the hearing and that, if the party does not have an advisor, the College will provide an advisor at no charge. Advisors cannot actively participate at the hearing, except to ask questions of the other party or witnesses.

The notice shall be provided by regular first-class mail and email to the San Jacinto College email address or other email address designated by the parties. A first-class letter will be deemed to have been received on the third day after the date of mailing, excluding any intervening Sunday or federal holiday. An email will be deemed to have been received on the second day after the sending of the message. A party's failure to update his or her postal and email addresses with the College, refusal to accept delivery of a letter, or refusal or failure to open email will not constitute good cause for failure to comply with a notice.

**9.9.3 Challenges to the Hearing Board.** Either party may challenge the impartiality or objectivity of members of the Hearing Board. A challenge must be submitted in writing to the chairperson of the Board within three school days after notice of the identity of the Board members. The challenge must state the reasons for the challenge. The chairperson will be the sole judge of whether they or other members can serve with impartiality and objectivity. If a Board member recuses themselves, an alternate hearing officer will be assigned.

**9.9.4 Access to Evidence.** Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report prepared pursuant to Section 9.

**9.9.5 Separate Rooms and Virtual Participation.** At the request of either party, the College will arrange a hearing with the parties located in separate rooms with technology enabling the Hearing Board and parties to simultaneously see and hear the participants answering questions.

Participants may appear at the hearing virtually and are not required to be physically present at the same physical location of the hearing.

**9.9.6 Conducting the Hearing.** The hearing will be conducted as an administrative hearing. Courtroom rules of evidence and civil procedure will not apply. Evidence, however, must be relevant and of the type that would be accepted by reasonable persons in the conduct of their important affairs. Objections shall be directed to the Hearing Board. The Hearing Board will rule on procedural matters and objections regarding testimony and exhibits. Finally, the Hearing Board will give effect to legally recognized privileges, such as the attorney-client privilege. The Hearing Board may seek legal advice from an attorney as appropriate, including the seeking of legal advice regarding the assertion of privilege by any party or witness, even if such would require a recess in the hearing.

Hearings are closed to members of the public.

The hearing will be recorded in audio or audiovisual format and may be transcribed at the discretion of the College. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

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

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

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

The advisor will ask a question of the other party or a witness. Before the question is answered, the chairperson will rule as to whether the advisor's question is relevant to the alleged conduct charges. If the chairperson finds that the proposed question is not relevant, the chairperson must explain the basis of the decision to exclude the question. If the chairperson allows a question, the party or witness must answer the question.

A party or witness may decline to submit to cross-examination or answer specific questions at the hearing. The Hearing Board may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions but may consider refusal to participate or answer questions in conjunction with other evidence. The Hearing Board must carefully weigh all relevant evidence.

When deciding responsibility, the Hearing Board may consider statements made by the parties and witnesses at the hearing, during the investigation (such as a signed witness statement), or during conversations between the parties, such as text messages, regardless of



whether the party or witness submits to cross-examination or answers specific questions about those statements at the hearing.

The Hearing Board will not make credibility determinations based on a person's status as a complainant, respondent, witness, student, or employee. The Hearing Board will not admit or consider (i) evidence subject to a legally recognized privilege unless the privilege was waived; (ii) a party's medical, psychological, and similar treatment records without the party's voluntary, written consent; or (iii) evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged sexual misconduct or offered to prove consent.

**9.9.7 Remedies, Disciplinary Action, and Sanctions:** If the respondent is a student, available sanctions are outlined in Section C, Disciplinary Sanctions, of the Code of Student Conduct. Remedies may include counseling or training; imposition of continuing restrictions on access to a location or program; suspension of rights or privileges; suspension or expulsion; and other disciplinary action, sanctions, or remedies appropriate to the circumstances and as informed by the evidence. If the respondent is an employee, possible disciplinary action or remedies may include counseling or training; reprimand; job demotion or reassignment; suspension; nonrenewal; termination; and other sanctions or remedies appropriate to the circumstances and as informed by the evidence. If the respondent is a third party, possible sanctions include restrictions on access to a location or program or a ban on visiting San Jacinto College campuses or property.

**9.9.8 Hearing Board Determination:** The Hearing Board shall prepare a written determination within 15 school days of the close of the evidence. The Hearing Board will engage in an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. The Hearing Board will not make credibility determinations based on a person's status as a reporting party, respondent, witness, student, or employee. The written determination must contain the following information: (A) identification of the allegations at issue; (B) a description of the procedural steps leading to the hearing, beginning with the date of the filing of the Formal Complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; (C) the findings of fact supporting the Hearing Board's determination based on a preponderance of the evidence; (D) conclusion(s) and a rationale as to whether the respondent is responsible for each incident of alleged misconduct based on the College's policies, procedures, or Codes of Conduct; (E) the discipline or sanctions, if applicable; (F) the remedies, if applicable, designed to restore the reporting party's access to the education program or activity; and (G) the College's appeal procedure and permissible bases for a party to appeal.

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

If the respondent is an employee, the Hearing Board will transmit a copy of the determination to the appropriate Director, Dean, or next level leader who has not been involved in the underlying dispute. If the Hearing Board has proposed termination, nonrenewal, or suspension, the Hearing Board shall transmit the determination to the Chancellor.

If the respondent is a third party, the Hearing Board will transmit a copy of the determination to the Vice Chancellor of Fiscal Affairs.

**9.9.9 Appeals.** Either party may appeal a Hearing Board's determination regarding a respondent's responsibility under the Title IX Grievance

Process or from the College's dismissal of a Formal Complaint (or any portion of a Formal Complaint) within seven school days of notification of such a determination on the following bases: (1) A procedural irregularity affected the outcome of the matter; (2) There is new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or (3) The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against the parties (generally or specifically in this matter) that affected the outcome of the case.

Appeals must be submitted in writing to a Title IX Coordinator by the deadline and explain the party's reason(s) for challenging the decision. Both parties will be notified in writing when an appeal is filed, and the appeal procedures will apply equally for both parties.

Upon receiving the appeal, the appropriate Title IX Coordinator(s) or designee(s) will assign an appellate decision-maker for the appeal. When an appeal involves two students, the Title IX Coordinator for students will assign an impartial appellate officer to determine the outcome of the appeal. When an appeal involves a student and an employee, the Title IX Coordinator(s) or their designee(s) will work together to identify an appropriate appellate decision-maker. In any case in which the respondent is an employee and the Hearing Board has determined that termination, nonrenewal, or suspension are appropriate, the Chancellor or designee shall serve as the appellate officer. In a case in which the respondent is an employee and the Hearing Board has found the employee responsible for a violation, the appeal shall be heard by a member of the Strategic Leadership Team (SLT) who was not involved in the underlying investigation or hearing. If the respondent is a member of the SLT, the Chancellor shall identify to the Title IX Coordinators or their designees an appropriate appellate decision-maker, who may be a College administrator, external consultant, or attorney who was not involved in the underlying investigation or hearing.

Any non-appealing party (or the College) will have seven school days from the notification of an appeal to submit a written statement to the appellate officer. The appellate officer will prepare a written decision within 30 calendar days from receipt of the appeal, providing a rationale for the ruling. The appellate officer will simultaneously provide a copy to the parties and the Title IX Coordinator. If the respondent is an employee and disagrees with the disposition of the appeal by the appellate officer and the appeal involves a nonrenewal, termination, or suspension, the Hearing Board will transmit a copy of the determination to the appropriate Director, Dean, or next level leader who has not been involved in the underlying dispute. If the Hearing Board has proposed termination, nonrenewal, or suspension, the Hearing Board shall transmit the determination to the Chancellor for handling consistent with the College's personnel policies pertaining to employees. The student complainant will be entitled to a copy of the appeal and may submit a written response within seven working days of receiving notice of the appeal.

## 10. Grievance Process for Other Inappropriate Conduct

Section 10 describes the process to investigate and adjudicate Formal Complaints of "Other Inappropriate Conduct" (defined in Section 1.2 of this Procedure). As stated in Section 2, a Formal Complaint is a written, signed document asking the College to investigate and adjudicate allegations of Sexual Misconduct. "Other Inappropriate Conduct" is Sexual Misconduct that does not satisfy the definition of "Title IX Sexual Harassment."

**10.1 Oral Reports and Allegations.** From time to time, an employee will observe or receive information regarding an alleged incident that the employee reasonably believes constitutes Other Inappropriate Misconduct. As stated in Section 3 above, except in limited situations, the employee must promptly report the known information to one of the College's Title IX Coordinators.

If conduct is observed or reported does not involve Title IX Sexual Harassment and the alleged victim does not want to submit a Formal Complaint of "Other Inappropriate Conduct" requesting an investigation, the College nonetheless may desire to address the conduct by gathering facts and, if appropriate, counseling or disciplining the alleged offender or taking other remedial action. The College may investigate the matter and impose sanctions in accordance with the Code of Student Conduct or Human Resources procedures, as may be applicable.

**10.2 Formal Complaints involving "Other Inappropriate Misconduct."**

The Title IX Coordinator(s) or designee(s) will evaluate whether a Formal Complaint describes "Title IX Sexual Harassment, "Other Inappropriate Conduct," or both. If the Formal Complaint involves Other Inappropriate Conduct but does not involve Title IX Sexual Harassment, an investigation will be initiated under Section 10 of this Procedure if the complaint articulates specific facts, which if determined to be true, would support a finding that this Procedure, the Code of Student Conduct, or other College policy was violated. The College may decline to process a complaint under a variety of circumstances, including:

- the complaint does not describe conduct covered by this Procedure, Code of Student Conduct, or other College policy;
- the complainant declines to cooperate or participate in the College's investigation;
- the complaint has been withdrawn or the requested remedy has already been implemented or was offered and rejected;
- other circumstances exist that prevent the College from gathering evidence sufficient to reach a determination as to the allegations in the Formal Complaint.

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

**10.3 Notification of Initiation of Investigation.** If the College initiates an investigation, the Title IX Coordinator(s) or designee(s) shall notify both parties in writing of the allegations and inform them of their right to submit a written response to the allegations. The written notice shall inform the parties that retaliation against the other party is prohibited and may result in disciplinary action. Additionally, the Title IX Coordinator, in consultation with the Office of Student Rights and Responsibilities and/or Human Resources, shall evaluate whether additional interim action is needed, such as an emergency removal/employee leave or mutual no-contact order.

**10.4 Investigation and Adjudication**

**10.4.1 Complaints against Student Respondents.** The Title IX Coordinator(s) or designee(s) will assign an impartial investigator from the the Office of Student Rights and Responsibilities to investigate the allegations in the Formal Complaint of "Other Inappropriate Conduct." The investigator will promptly investigate the allegations in the Formal Complaint, including interviewing the complainant and respondent and

gathering relevant evidence. The investigator will consider the totality of circumstances, including the context and duration of the conduct and its severity. The investigator's investigation report shall include a preliminary determination regarding responsibility. The completed investigation report and preliminary determination regarding responsibility will be submitted to the designated student conduct officer who has not served as a witness, investigator, or decision-maker in the matter. Within 10 school days, the designated student conduct officer will determine whether the evidence is sufficient to establish a violation of College policy, Code of Student Conduct, or Student Handbook and will determine an appropriate sanction or sanctions given the nature of the allegations, the evidence, and the student's disciplinary history, if any. The determination will be communicated in writing to the parties and the Title IX Coordinator via email and, where necessary, by US mail. If the student-respondent is no longer enrolled due to withdrawal or graduation, the determination of responsibility will be final, and no further adjudication or appeal process will apply.

If the proposed sanction is less than suspension or expulsion, then the respondent may request an appeal before the Associate Vice Chancellor of Student Services using the student conduct process in the Code of Student Conduct. The respondent and reporting party will each have an equitable opportunity to present evidence relevant to the alleged violation. If the proposed sanction is an expulsion or suspension in excess of five school days, the respondent may request a hearing before a Student Conduct Appellate Board using the process in the Code of Student Conduct. In student discipline cases involving "sexual harassment" as defined under Texas law, the College must ensure that the students have reasonable and equitable access to all evidence relevant to the alleged violation in the institution's possession, including any statements made by the alleged victim or by other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality.

**10.4.2 Complaints against Employee Respondents.** The Title IX Coordinator(s) or designee(s) will assign an impartial investigator to investigate the misconduct under Human Resources Procedure 1-2 (<https://www.sanjac.edu/about-san-jac/policies-and-procedures/procedure-1-2-employee-harassment/>). The investigator will promptly investigate the allegations in the Formal Complaint, including interviewing the complainant and respondent and gathering relevant evidence. The investigator will prepare a written investigation report with findings of fact and a preliminary determination regarding responsibility. The report will identify the provision(s) of any policies, procedures, or rules that allegedly were violated. The investigator will consider the totality of circumstances, including the context and duration of the conduct and its severity. The completed investigation report and preliminary determination regarding responsibility will be submitted in writing to both Title IX Coordinators, the employee-respondent, the student complainant, and the employee's appropriate Director, Dean, or next level leader who has not been involved in the underlying dispute. The employee's appropriate leader will review the investigation report and investigation record and respond within 15 working days in accordance with applicable College policies and procedures. The leader's written disposition shall be provided to the parties, the Title IX Coordinator, and Human Resources. If the proposed discipline is termination, then the proposal shall be submitted to the Chancellor or Chancellor's designee. The procedures in Policy IV-G-1 shall be followed for contract employees, and Policy IV-G-2 shall be followed for non-contract employees. If the proposed discipline is not termination, the respondent may seek review of the decision pursuant to Policy IV-I (<https://www.sanjac.edu/about/>

policies-procedures/III-3006-D-a-Allegations-of-Sexual-Misconduct.pdf), the Concerns and Grievance Policy. Any grievance shall be based on the investigation record developed under this Procedure, and the grievance shall be heard by a member of the SLT who was not involved in the underlying dispute. A respondent may contest a finding of misconduct, the discipline, or both. A respondent may contest a finding of misconduct, the discipline, or both.

**10.4.3 Complaints against Third-Party Respondents.** The term “third party respondent” applies to persons who are not employees, students, or trustees of San Jacinto College. This term includes campus visitors, visiting athletes and students from other schools, and vendors providing service on campus. The term includes individuals who provide off-site instructional experiences for students at organizations with whom the College has a contractual relationship or memorandum of understanding (such as hospitals providing clinical experiences for students in a health profession). If the respondent works for an organization with whom the College conducts business, the Title IX Coordinators will determine if a contract or memorandum of understanding provides procedures for notifying the organization and addressing the complaint against the respondent. The College will comply with applicable contract procedures, including procedures pertaining to available remedies and required notifications. The Title IX Coordinators for students and employees, as needed, will jointly confer to assign an impartial investigator to investigate the allegation. The investigator will promptly investigate the allegations in the Formal Complaint. The investigator will prepare a written investigation report with findings of fact and a preliminary determination regarding responsibility. The report will identify the provision(s) of the policy, procedure, or other applicable rules that allegedly were violated.

Within 10 working days of receipt of the report and record, an impartial decision-maker will prepare a written determination and determine an appropriate sanction as may be warranted. The decision-maker's disposition shall be communicated in writing to the parties and one or both Title IX Coordinators. If the respondent works for an organization with whom the College conducts business, the College shall follow any applicable procedures for notifying the organization.

A respondent may appeal a finding of misconduct, the sanction, or both. Appeals must be filed within seven school days of notification of such a determination and may be based only on the following bases: (1) A procedural irregularity affected the outcome of the matter; (2) There is new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or (3) The Title IX Coordinator, investigator(s), or decision-maker had a conflict of interest or bias for or against the parties (generally or specifically in this matter) that affected the outcome of the case. Both parties will be notified in writing when an appeal is filed.

Appeals shall be heard by a member of the SLT who had no involvement in the underlying dispute. Any non-appealing party (or the College) will have seven school days from the notification of an appeal to submit a written statement to the appellate officer. The appellate officer will prepare a written decision within 30 calendar days from receipt of the appeal, providing a rationale for the ruling. The appellate officer will simultaneously provide a copy to the parties and the Title IX Coordinator. If the respondent works for an organization with whom the College conducts business, the College shall follow any applicable procedures for notifying the organization.

## 11. Other Rules and Additional Conduct Violations

**11.1 False Information and False Complaints.** Any person, who in bad faith, knowingly files a false complaint under this Procedure or provides materially false information is subject to disciplinary action up to and including dismissal or separation from San Jacinto College. A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not establish the falsity of a report, Formal Complaint, or evidence. Similarly, a determination that a respondent is responsible for a policy violation does not imply that a Respondent's statements disclaiming responsibility were false.

**11.2 Interference with the Grievance Process.** Any person who interferes with the Grievance Process (outlined in Section 9 of this Procedure) is subject to disciplinary action up to and including dismissal or separation from the College. Actions that constitute interference with a Grievance Process include, but are not limited to:

1. Attempting to coerce, compel, or prevent an individual from providing testimony or evidence;
2. Removing, destroying, or altering documentation relevant to the Grievance Process; or
3. Knowingly providing false or misleading information to a Title IX Coordinator, investigator, hearing officer, or appeal officer, or encouraging others to do so.

**11.3 Calculating Deadlines under this Procedure.** When a deadline is stated in terms of “calendar” days and the deadline falls on a weekend or state or federal holiday, the deadline shall be moved to the next day that does not fall on a weekend or a holiday. When a deadline is stated in terms of “school” days, the deadline shall be calculated based on the days that the College is open and holding classes for students (whether in person or virtually). The term “school days” excludes spring break, winter break, and final examination days.

**11.4 Accessibility Services Requests.** A student, who is a qualified person with a disability under federal law and needs assistance in complying with this Procedure, may contact the appropriate Title IX Coordinator for assistance.

**11.5 No Effect on Pending Personnel or Academic Actions Unrelated to the Formal Complaint.** The filing of a Formal Complaint will not prevent or delay any action unrelated to the Formal Complaint, including: (1) any evaluation or disciplinary action relating to a student or employee with an unsatisfactory performance or who has violated other College rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a College employee.

**11.6 Timeframe for Completion of Grievance Process.** The Grievance Process will be completed within 150 days from the filing of the Formal Complaint. This timeline assumes that the investigation phase may take approximately 90 days and that the hearing and appeal phase may take approximately 60 days. The College may extend these timeframes for good cause and with written notice to the parties of the delay, the reason for the delay, and the length of the extension of time. Good cause may include, but is not limited to, illness of a party, the party's advisor, or the investigator; concurrent law enforcement proceedings; witness unavailability; a public health emergency; or the need to arrange for language assistance or technology or disability-related accommodations.

**11.7 Grievance Process Document Retention.** The College shall retain all documentation related to a Grievance Process, including documents relating to the investigation, hearing, and any appeal, for seven years.

**11.8 Conflict between Procedures.** In the event that any portion of Procedure 400 is found in conflict with the Board Policy or Administrative Procedure on Sexual Misconduct, the Board Policy and Administrative Procedure shall take precedence.

## 12. Definitions Applicable to this Procedure<sup>1</sup>

**Complainant:** The individual who is alleged to be the victim of any prohibited conduct under this Procedure and has filed a Formal Complaint. The term “reporting party” also is used.

**Confidential Employees:** Confidential Employees include counselors in Counseling and Psychological Services or a health care provider in Health Services. Additionally, employees who receive information regarding an incident of Sexual Misconduct or Other Inappropriate Misconduct under circumstances that render the employee’s communications confidential or privileged under other law (such as attorneys) also are considered Confidential Employees.

**Confidential Resources:** Confidential Resources include individuals in the community such as clergy, external mental health providers, and external medical providers.

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

Consent is not effective if it results from: (a) the use of physical force or restraint; (b) a threat of physical force; (c) acts of intimidation; (d) acts of coercion; (e) incapacitation (including through the voluntary or involuntary ingestion of alcohol or controlled substances); or (f) other evidence that shows that the individual’s ability to exercise their own free will was eliminated on the occasion in question. Specific examples of those who cannot give consent include but are not limited to:

1. The individual is under the age of 17 and is not the spouse of the actor;
2. The individual is unconscious or asleep;
3. The individual has not consented to the sexual act with the actor and the actor knows the other person is unaware that the sexual act is occurring;
4. The individual is mentally impaired or has a mental disability; or
5. The actor has misrepresented or concealed their true identity to the individual.<sup>2</sup>

**Dating Violence:** “Dating violence” means violence committed by the actor against a person with whom the actor is or has been in a social relationship of a romantic or intimate nature. The existence of the relationship shall be determined based on a consideration of the following factors: (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between persons involved in the relationship.<sup>3</sup> Dating violence includes, but is not limited

to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.<sup>4</sup>

**Domestic Violence:** “Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse, a current or past intimate partner, a person that the victim shares a child with, or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas. In Texas, a person commits an assault against a family member, household member, or a current or past dating partner. An assault consists of:

1. Intentionally, knowingly, or recklessly causing bodily injury to another person;
2. Intentionally or knowingly threatening another person with imminent bodily injury; or
3. Intentionally or knowingly causing physical contact with another that the offender knows or reasonably should know the victim will find provocative or offensive.

A person commits aggravated domestic assault if that person intentionally, knowingly, or recklessly causes serious bodily injury to a family member, household member, or a current or past dating partner, or uses or exhibits a deadly weapon in the course of committing the assault crime.<sup>5</sup>

**Education Program or Activity:** This Procedure applies to conduct that occurs on College-owned or College-leased property or in a College vehicle; during a College-sponsored activity whether on campus or off campus; in a building owned or controlled by a student organization that is officially recognized by the College; or in other instances in which the College exercised substantial control over the alleged perpetrator and the context in which the conduct occurred.

**Formal Complaint:** A complaint filed under Section 9 of this procedure.

**Grievance Process:** The process by which Formal Complaints under this Procedure are investigated and adjudicated under Sections 9 and 10.

**Other Inappropriate Conduct:** Conduct on the basis of sex that does not meet federal definitions of sexual harassment, sexual assault, dating violence, domestic violence, or stalking as stated in this Procedure but that is inappropriate for an educational environment. The conduct is subject to College policy if it occurs on campus or within the education programs and activities of the College or if occurs off campus but is likely to adversely impact the College’s education programs and activities or interfere with a student’s ability to participate in or benefit from the College’s education programs and activities. The conduct must be objectively offensive to a reasonable person. The term includes the following:

1. “Sexual harassment” as defined under the Texas Education Code, sec. 51.251(5). The Texas statute prohibits unwelcome, sex- based verbal or physical conduct that: (A) in the employment context, unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment; or (B) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student’s ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.
2. “Other Inappropriate Conduct” includes, but is not limited to, unwelcome sex-based advances or propositions; unwelcome requests for sexual favors; unwelcome physical contact or touching of a sexual nature; persistent and unwanted sexual attention;



voyeurism; unwelcome sexual gestures; public exposure of one's sexual organs on campus or at an event under the control of the College; displaying obscene materials in a public place on campus; forwarding pornographic or obscene material via email or text to non-consenting recipients; recording or photographing sexual activity or a person's genital area or breast area or from a vantage point that a reasonable person would view as an invasion of personal privacy; and allowing a third party to view consensual sex without the knowledge of the other participant.

3. "Other Inappropriate Sexual Conduct" includes, but is not limited to, unwelcome comments of a sexual nature that a reasonable person would view as gratuitous, intimidating, offensive, and/or degrading and that adversely impacts an individual's educational environment. The College's definitions are not intended to restrict constitutionally protected speech. In the academic context, including the context of a classroom discussion or preparation of a course assignment, a relevant factor is whether the comments are reasonably related to course content or serve a legitimate pedagogical function.
4. "Other Inappropriate Sexual Conduct" includes engaging in conduct of a sexual nature that is consensual between two or more parties but that is nonetheless inappropriate in an educational environment, such as engaging in sexual acts in a campus building or displaying sexually oriented objects or materials in the presence of third parties while on campus.

**Parties:** The term "parties" refers to the "Reporting Party" and the "Respondent" under this Procedure.

**Preponderance of the Evidence:** The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of Prohibited Conduct under this Policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

**Prohibited Conduct:** This term collectively refers to the conduct prohibited by this Procedure, including Title IX Sexual Harassment, Other Inappropriate Conduct, and Retaliation.

**Retaliation:** Any adverse action (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone because the individual has made a report or filed a Formal Complaint; has supported or provided information in connection with a report or a Formal Complaint; has participated or refused to participate in a Grievance Process under this Policy; or has engaged in other legally protected activities. For students, prohibited retaliation may include, but is not limited to, harassment, an unwarranted grade reduction, exclusion from a College activity, destruction of property, and cyberbullying. For employees, retaliation could include, but is not limited to, a demotion or other adverse employment action that would not have occurred but for the employee's protected action. Retaliation does not include (i) exercising First Amendment rights or (ii) charging an individual with making a materially false statement in bad faith in the course of a grievance proceeding.

**Reporting Party:** The individual who is alleged to be the victim of any prohibited conduct under this Procedure. The term "complainant" also is sometimes used if the alleged victim has filed a Formal Complaint. For ease of reference, this Procedure uses "Reporting Party" to indicate any alleged victim regardless of whether a Formal Complaint has been filed.

**Respondent:** An individual who has been reported to be the perpetrator of Prohibited Conduct under this Procedure.

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

1. Rape - 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.
2. Fondling - 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 their age or because of their temporary or permanent mental incapacity.
3. Incest - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. Statutory Rape - Sexual intercourse with a person who is under the statutory age of consent.

**Sexual Harassment under Title IX:** As stated in Title IX regulations (34 CFR section 106.30), sexual harassment under the Title IX Grievance Process is conduct on the basis of sex that satisfies one or more of the following:

1. *Quid pro quo* harassment occurs when an employee of the College conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
3. "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined in this Procedure.

Subsections (a) and (c) above are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such conduct is sufficiently serious to deprive a person of equal access. Therefore, any instance of *quid pro quo* sexual harassment and any instance of sexual assault, dating violence, domestic violence, and stalking are considered sexual harassment under this Procedure.

**Sexual Harassment under Texas Law:** The term "sexual harassment" also is defined in the Texas Education Code, sec. 51.251(5); however, that definition is different from the definition under Title IX regulations. In this Procedure, complaints asserting allegations of "Other Inappropriate Conduct" includes the definition of sexual harassment as stated in the Texas Education Code, sec. 51.251(5).

**Sexual Misconduct:** This term encompasses sexual harassment, sexual assault, dating violence, domestic violence, and stalking as these terms are defined under Title IX regulations and the Clery Act. The terms apply to conduct that occurs in an education program or activity of the College.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: 1) fear for the person's safety or the safety of others; or 2) suffer substantial emotional distress. For the purposes of this definition:

1. 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.

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

<sup>1</sup> The definitions in the text of this Procedure will govern the processing of reports and complaints under this Procedure. The definitions largely track definitions found in Title IX regulations and under the Clery Act. However, in certain instances, particularly those involving criminal prosecution, definitions under Texas law may be informative. Therefore, this procedure cross references certain Texas laws as may be appropriate.

<sup>2</sup> "Consent" under Texas law with respect to sexual assault is defined in Section 22.011(b) of the Texas Penal Code.

<sup>3</sup> See 34 U.S.C. § 12291(a)(10); 34 C.F.R. § 106.30(a).

<sup>4</sup> "Dating violence" under Texas law is defined in 71.0021 of the Texas Family Code.

<sup>5</sup> See also Texas Penal Code § 22.01; Texas Family Code § 71.004.