

**Negotiated Rulemaking Committee
Sexual Harassment/Assault**

September 23, 2019
9:30a – 4:30p
Board Room

AGENDA

- I. Introductions
- II. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
- III. Brief Overview of Roles and Responsibilities
 - A. Role of Facilitator
 - B. Role of Sponsor Agency
 - Technical and administrative support
 - C. Role of Committee Members
 - Representative role
 - Commitment to negotiate in good faith
- IV. Consideration of Facilitator
- V. Procedural Issues
 - A. Discussion and Consideration of Ground Rules
 - B. Discussion and Consideration of Definition of Consensus
- VI. Discussion of Draft Rule Language on Sexual Harassment/Assault
- VII. Consideration of Proposed Rule Language on Sexual Harassment/Assault

Texas Education Code Applicable Provisions Negotiated Rulemaking

SECTION 29. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.0331 to read as follows:

Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board shall engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, **when adopting a policy, procedure, or rule relating to:**

(1) an admission policy regarding the common admission application under Section 51.762, a uniform admission policy under Section 51.807, graduate and professional admissions under Section 51.843, or the transfer of credit under Section 61.827;

(2) the allocation or distribution of funds, including financial aid or other trustee funds under Section 61.07761;

(3) the reevaluation of data requests under Section 51.406;

(4) compliance monitoring under Section 61.035; or

(5) the reporting of certain incidents of sexual harassment, sexual assault, dating violence, or stalking under Subchapter E-2, Chapter 51.

THECB Adopted Rules Related to Negotiated Rulemaking

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

Section

- 1.1. Dates for Regular Quarterly Meetings of the Board
- 1.2. Authority of the Commissioner to Interpret Rules
- 1.3. Educational Data
- 1.4. Rules of Order
- 1.5. Coordinating Board Committees
- 1.6. Advisory Committees
- 1.7. Petition for the Adoption of Rules
- 1.8. Historically Underutilized Business (HUBs) Program
- 1.9. Training for Members of Governing Boards and Board Trustees
- 1.10. Administration of the Open Records Act
- 1.11. Protest Procedures for Resolving Vendor Protests Relating to Purchasing Issues
- 1.12. Foreign Travel
- 1.13. Internal Auditor
- 1.14. Negotiated Rulemaking
- 1.15. Authority of the Commissioner to Propose Board Rules
- 1.16. Contracts for Materials and Services
- 1.17. Authority of the Commissioner to Provide Direct Supervision of the Education Research Centers
- 1.18. Operation of Education Research Centers
- 1.19. Education and Training of Board Administrators and Employees

1.1 – 1.13 (No change.)

1.14. Negotiated Rulemaking

(a) Definitions. The following words and terms, when used in this rule, shall have the following meaning:

(1) Alternative Dispute Resolution coordinator – An agency employee appointed under Chapter 1, Subchapter B, Rule 1.22.

(2) Board or agency– Texas Higher Education Coordinating Board

(3) Commissioner – The Commissioner of Higher Education

(4) Consensus – The negotiated rulemaking committee has reached consensus on a matter only if the agreement is unanimous, unless the committee has unanimously agreed to define consensus in another manner. The absence or silence of a member at the time the final consensus vote is taken is equivalent to agreement. If consensus is achieved, negotiated rulemaking committee members may not thereafter withdraw their agreement.

(5) Institutions of higher education – As defined in Texas Education Code Section 61.003

(6) Private or independent institutions of higher education – As defined in Texas Education Code Section 61.003

(b) If the Assistant Commissioner whose Division has jurisdiction over the subject matter of the rule or rules to be adopted concludes that the agency may benefit from negotiated rulemaking, he or she shall request that the agency's Alternative Dispute Resolution (ADR) coordinator assist in determining

whether it is advisable to proceed under the procedures established in Chapter 2008 of the Texas Government Code.

(1) Scope and Purpose. This rule also implements Texas Education Code Sections 61.0331, 61.0572, 61.058, and 61.07761 which require the Board to engage in negotiated rulemaking with institutions of higher education in accordance with the procedures established in Texas Government Code Chapter 2008 when adopting a policy, procedure, or rule relating to:

(2) the transfer of credit under Texas Education Code Section 61.827 or admission policies regarding:

(A) the common admission application under Texas Education Code Section 51.762;

(B) uniform admissions under Texas Education Code Section 51.807; or

(C) graduate and professional admissions under Texas Education Code 51.843; or

(3) the reevaluation of data requests under Texas Education Code Section 51.406;

(4) compliance monitoring under Texas Education Code Section 61.035;

(5) the standards for cost, efficiency, space need, and space use under Texas Education Code Sections 61.0572 and 61.058 in regards to:

(A) new construction, rehabilitation, repair of buildings and facilities at institutions of higher education; and

(B) the purchases of improved real property added to institutions of higher education's educational and general buildings and facilities inventory; or

(6) the allocation (including the allocation methodologies and related procedures) or distribution of funds, including financial aid or other trusteed funds under Texas Education Code Section 61.07761, to institutions of higher education and private or independent institutions of higher education. For rulemaking on this issue, the Board shall engage in negotiated rulemaking with both institutions of higher education and private or independent institutions of higher education, as applicable.

(A) With the exception of sections 1.14(a), (b), and (d)(3)-(4), this rule and the procedures set forth herein apply only to those matters, as set forth in (b-1), in which the Board is required to engage in negotiated rulemaking.

(B) In matters other than those addressed in (b-1), the Board retains the right to engage in negotiated rulemaking in accordance with the procedures established in the Texas Government Code, Chapter 2008.

(c) Appointment of Convener. The ADR coordinator will appoint an agency employee to serve as the convener to assist in negotiated rulemaking. The convener may not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the convener.

(d) Duties of Convener. (1) The convener will assist the ADR coordinator in identifying institutions of higher education (and private or independent institutions when rulemaking under 1.14(a)(5) is considered) and other stakeholders (such as students, state agencies, and accreditors) who are likely to be affected by the proposed rule(s), including identifying institutions and other stakeholders who may oppose the issuance of rule(s). The convener will discuss with institution representatives and

other stakeholders whether they are willing to participate in negotiated rulemaking, which issues a negotiated rulemaking committee should address, and whether there are other institutions or persons the convener needs to identify who may be affected by the proposed rule(s).

(2) Where the Board is required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator the outcome of the above discussions.

(3) Where the Board is not required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator on the relevant considerations regarding negotiated rulemaking, including, but not limited to:

(i) the number of identifiable interests that would be significantly affected by the proposed rule(s),

(ii) the probable willingness and authority of the representatives of affected interests to negotiate in good faith,

(iii) the probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule(s),

(iv) the adequacy of Board, institution, and citizen resources to participate in negotiated rulemaking, and

(v) the probability that the negotiated rulemaking committee will provide a balanced representation between affected stakeholder interests.

(4) Where the Board is not required to engage in negotiated rulemaking, the convener shall also recommend to the ADR coordinator whether negotiated rulemaking is appropriate.

(5) The report and recommendations of a convener are public information and available on request to any member of the public.

(e) Publishing Notice of Proposed Negotiated Rulemaking. To initiate negotiated rulemaking, the Commissioner will publish a notice of intent to establish a negotiated rulemaking committee to prepare proposed rules. Such notice will be published both in the *Texas Register* and on the Board's website. The ADR coordinator will consider all comments received by the close of the comment period pursuant to the notice of intent. The notice of intent will include:

(1) a statement that the Board intends to engage in negotiated rulemaking;

(2) a description of the subject and scope of the rule(s) to be developed;

(3) a description of the known issues to be considered in developing the rule(s);

(4) a list of the interests likely to be affected by the proposed rule(s);

(5) a list of the individuals the ADR coordinator proposes to appoint to the negotiated rulemaking committee to represent the Board and affected interests (each committee will include at least one agency staff representative);

(6) a request for comments on the proposal to engage in negotiated rulemaking, including a description of the issues the commenter believes will need to be addressed in developing the rule(s), as well as on the proposed membership of the negotiated rulemaking committee; and

(7) a description of the procedure through which an institution or person who will be significantly affected by the proposed rule(s) may, before the ADR coordinator appoints members to the negotiated

rulemaking committee, apply for membership on the committee or nominate another to represent the institution's or person's interests on the committee (before nominating an individual to the committee, the nominator should confirm that the potential nominee can and will make the necessary time commitment to the negotiations).

(f) Appointment of Negotiated Rulemaking Committee Members. After considering comments and nominations received in response to the notice of proposed negotiated rulemaking, the ADR coordinator will appoint members to a negotiated rulemaking committee to serve until the proposed rule(s) (if any) is adopted by the Board. The ADR coordinator will appoint members to the committee with a goal of providing adequate and balanced representation for the affected interests while keeping the size of the committee manageable. The ADR coordinator shall select individuals with demonstrated expertise or experience in the relevant matters under negotiations and who reflect the diversity of the identifiable interests which could be significantly affected by the proposed rule(s). An individual selected to serve on the committee will be expected to represent the interests of his or her entity, organization or group, and participate in the negotiations in a manner consistent with the goal of developing proposed rules on which the committee will reach consensus.

(g) Costs of Participating in Negotiated Rulemaking.

(1) The Board will provide appropriate administrative support to the negotiated rulemaking committee. Except as provided below, a member of a negotiated rulemaking committee is responsible for the member's own costs in serving on the committee. However, if:

(A) The member certifies that he or she (or the entity, organization or group which the member represents) lacks sufficient financial resources to participate as a member of the committee and provides any requested proof of same; and

(B) The ADR coordinator determines that the member's service on the committee is necessary for the adequate representation of an affected interest,

(C) then, the Board may pay a member's reasonable travel and per diem costs related to the member's service on the committee at the rate set in the General Appropriations Act for state employees.

(2) The costs of the negotiated rulemaking facilitator described in subsection (h) shall be borne equally, on a pro rata basis, by all entities represented on the negotiated rulemaking committee, unless the negotiated rulemaking committee unanimously agrees to a different cost allocation; or the facilitator is an employee of the Board, in which event the costs of the facilitator shall be borne by the Board.

(h) Appointment of Negotiated Rulemaking Facilitator. The ADR coordinator will appoint a negotiated rulemaking facilitator who will utilize alternative dispute resolution skills to attempt to arrive at a consensus on a proposed rule(s). The ADR coordinator may appoint a Board employee or contract with another state employee or private individual to serve as the facilitator. The ADR coordinator's appointment of the facilitator is subject to the approval of the negotiated rulemaking committee and the facilitator serves at the will of the committee. The ADR coordinator will appoint the facilitator utilizing, among other things, the following criteria:

(1) The facilitator must possess the qualifications required for an impartial third party under Civil Practice and Remedies Code Section 154.052(a) and (b);

(2) The facilitator is subject to the standards and duties prescribed by Civil Practice and Remedies Code Sections 154.053(a) and (b) and has the qualified immunity prescribed by Civil Practice and Remedies Code Section 154.055, if applicable;

(3)The facilitator will not be the person designated to represent the Board on the negotiated rulemaking committee on substantive issues related to the rulemaking; and

(4)The facilitator will not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the facilitator.

(i) Duties of Negotiated Rulemaking Committee and Facilitator. The facilitator will preside over meetings of the negotiated rulemaking committee and assist the members of the committee to establish procedures for conducting negotiations and will utilize alternative dispute resolution skills to encourage a consensus on the proposed rule(s). The facilitator may not, however, compel or coerce the members to reach a consensus.

(j) Consensus and the Negotiated Rulemaking Committee's Report. If the negotiated rulemaking committee reaches a consensus, the committee will draft and send a report to the Board that contains the text of the proposed rule(s). If the committee determines that only a partial agreement on a proposed rule(s) has been reached, the committee will draft and send a report to the Board that describes the partial agreement achieved, lists the unresolved substantive issues, and includes any other information or recommendations of the committee. The committee's report is public information. If consensus is not achieved, the Board shall determine whether to proceed with proposed rule(s). If the Board decides to proceed with proposed rule(s), the Board may use language developed during the negotiations or develop new language for all or a portion of the proposed rule(s).

(k) Proposed Rulemaking under the APA. If the Board decides to proceed with rulemaking after receipt of the negotiated rulemaking committee's report, the Board shall initiate rulemaking under the regular Administrative Procedures Act (APA) procedures, as prescribed in Texas Government Code Chapter 2001, Subchapter B. In addition to the APA's requirements regarding the contents of notice of proposed rulemaking, the notice will also state that:

(1)the Board used negotiated rulemaking in developing the proposed rule, and

(2)the negotiated rulemaking committee report is public information and the report's location at which it will be available to the public.

All published proposed rules will conform to the agreements resulting from consensus, if any, achieved through negotiated rulemaking (as reflected in the negotiated rulemaking committee's report).

(l) Confidentiality of Certain Records and Communications. Civil Practice and Remedies Code (CPRC) Sections 154.053 and 154.073 apply to the communications, records, conduct, and demeanor of the facilitator and the members of the negotiated rulemaking committee as if the negotiated rulemaking were a dispute being resolved in accordance with CPRC Chapter 154. In the negotiated rulemaking context, the Texas Office of the Attorney General, subject to review by a Travis County district court, decides in accordance with CPRC Section 154.073(d) whether a communication or material subject to Section 154.073(d) is confidential, excepted from required disclosure, or subject to required disclosure. Notwithstanding CPRC Section 154.073(e):

(1) a private communication and a record of a private communication between a facilitator and a member or members of the committee are confidential and may not be disclosed unless the member or members of the committee, as appropriate, consent to the disclosure; and

(2) the notes of a facilitator are confidential except to the extent that the notes consist of a record of a communication with a member of the committee who has consented to disclosure in accordance with subdivision (1).

(m) The Board hereby delegates to the Commissioner the responsibilities and authority set forth in this section.

THECB Ground Rules For Negotiated Rulemaking

I. GOAL

To reach consensus on the language of a proposed rule

II. REACHING DECISIONS

- A. Use of Consensus. Negotiations will be conducted with the intent of reaching a consensus decision.
- B. Consensus. Unless the Committee members agree unanimously to another definition at the outset of the process:

Consensus means that all Committee members concur in the decision because their major interests have been taken into consideration and addressed in a satisfactory manner. While committee members may differ in their acceptance of individual terms of the agreement, all committee members can support the final agreement given the trade-offs and current circumstances.

Committee members can reach consensus without embracing each element of the agreement with the same fervor as other members. Some parties may strongly endorse a particular solution while others may accept it as a workable agreement.

III. AGREEMENT

- A. Final Product/Proposed Rule. The Committee intends for its final work product to be the text of a proposed rule. If the Committee reaches consensus on a proposed rule, the agency will accept the proposed rule as its draft with the recommendation that it be published in the Texas Register as drafted.
- B. Failure to Reach Consensus. If the Committee is unable to reach consensus on a proposed rule, then the Committee will draft a report that specifies the issues on which consensus was reached, the issues that remain unsolved, and any other information that the Committee considers important.
- C. Support of Agreement. The Committee members agree not to take any action to inhibit the adoption or implementation of a rule that conforms to the consensus proposal of the Committee. Furthermore, members agree to advocate for the consensus rule to their membership and to other policy makers both during and after the negotiated rulemaking process. If a member fails to keep this agreement, all other members agree to submit comments to the agency, any other relevant state officials, government bodies, or Courts, stating that:
1. All members concurred in the proposed rule; and
 2. All members supported approval of the final rule that conforms to the consensus proposal of the Committee.

IV. COMMITTEE MEETINGS

- A. Meeting Attendance
1. The same Committee members listed at the end of this document need be present at each full meeting of the Committee.
 2. Scheduled meetings will proceed even if some members are absent.
 3. Absent members are responsible for updating themselves in the proceedings of missed meetings.

4. After the negotiations have begun, additional members may join the Committee only with the concurrence of the Committee.

B. During the Meetings

1. Meetings will be open to the public. However, participation in negotiations will be limited to Committee members and invited experts.
2. Visitors are requested to respect the process and abide by these ground rules. This request will be stated at the beginning of each meeting.
3. Visitors who wish to comment during the negotiations may do so through the following avenues:
 - a. Channel comments through one of the Committee members;
 - b. Submit written comments to the Committee members; or
 - c. Submit comments through the website, if available.Further, a Committee member may invite a member of the audience to speak, as that member sees fit. Initial comments should be limited to three minutes and may be extended at the Committee's request.
4. The proceedings of the Committee will not be electronically recorded, but the facilitator may prepare draft summaries of the meetings for the convenience of the members. Such summaries shall not be approved by the Committee, and they are not to be construed to represent the official position of the Committee or any member on what transpired at a Committee meeting. Summaries will note issues discussed, any outcome to discussions, requests for data, and any other action items.

C. Caucuses

1. The facilitator may at any time request a confidential caucus with specific members or groups of members to attempt resolution of a specific issue.
2. Any member may request a caucus at any time to consult with other members, but such caucuses are to be used sparingly. The caucusing members will be asked to move into the hallway or another meeting area to conduct the caucus. The length of caucuses will be determined at the discretion of the facilitator who may serve as a mediator during such caucuses.

- D. Stakeholder Representatives. Individual members acknowledge that they have been named to the Committee as the representative of all others in their stakeholder class, and not just themselves. To this end, the members pledge to communicate with other members of their organization or stakeholder class to ensure that the deliberations reflect the viewpoints of the stakeholder class as a whole.

V. **NEGOTIATING**

- A. All members agree to act in good faith in all aspects of these negotiations. Members agree to speak openly and commit to addressing each other's concerns and needs. Members may not use other members' specific offers, positions, or statements made during the negotiations for any purpose outside the negotiation.
- B. All members commit to share relevant information, which if excluded, would damage the credibility or outcome of the consensus. Members will make every effort to provide requested information reasonably in advance of scheduled meetings.
- C. All members will endeavor to tailor their statements during meetings to ensure the opportunity for all members to participate fully on issues in which they have an interest. Members agree to speak one at a time and allow each other a reasonable opportunity for uninterrupted comments. All members will refrain from personal attacks.

- D. Any Committee member may withdraw from the negotiations at any time without prejudice. The remaining Committee members will then decide whether to continue the negotiations.

VI. COMMUNICATIONS

- A. When communicating with the press, Committee members agree to limit their statements to expressions of their own interests. Inquiries from the press may be referred to the facilitators. If the Committee decides to issue a press statement, the Committee will agree on the language of the press statement.
- B. In all communications outside of the Committee, including those to the press, members may give information concerning issues raised and actions taken but agree to refrain from attributing views or positions expressed in a non-public setting and identified as confidential to a particular group or individual, even if that party withdraws from negotiations.

Mindy Nobles

Assistant Director, Academic Quality and Workforce
Texas Higher Education Coordinating Board

Mindy Nobles has been employed with the Texas Higher Education Coordinating Board since 2013 and serves as Assistant Director in the Academic Quality and Workforce Division. She serves as lead administrator for the Carl D. Perkins Grant Program and is the coordinator of the agency's Methods of Administration monitoring for compliance with Civil Rights in Vocational Education regulations of the U.S. Department of Education. Ms. Nobles additionally provides oversight of WECM and program of study advisory committees.

Ms. Nobles has more than 20 years of experience in Texas community and technical college education and administration. At Northeast Texas Community College (NTCC), Ms. Nobles served as Associate Professor of English and Director of Instruction for Humanities. Prior to coming to NTCC, Ms. Nobles supervised the Job Training Partnership Act (JTPA) Program at Kilgore College (KC) and later served as KC's grants writer. At Texas State Technical College–Marshall, Ms. Nobles served as Workforce Development Coordinator in the college's JTPA program.

Ms. Nobles holds an M.A. and B.A. in English from the University of Texas at Tyler and an A.A. in Liberal Arts from Kilgore College, graduating from all programs with highest honors. She completed doctoral coursework in Written Discourse at Texas A&M University–Commerce prior to joining the Coordinating Board. Ms. Nobles is certified in Dispute Resolution and is an active member of the Austin Association of Mediators.

AN ACT

relating to a reporting requirement for certain incidents of sexual harassment, sexual assault, dating violence, or stalking at certain public and private institutions of higher education; creating a criminal offense; authorizing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 51, Education Code, is amended by adding Subchapter E-2 to read as follows:

SUBCHAPTER E-2. REPORTING INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING

Sec. 51.251. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Dating violence," "sexual assault," and "stalking" mean dating violence, sexual assault, or stalking, as applicable, that an institution of higher education is required to report under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)).

(3) "Employee of a postsecondary educational institution" does not include a student enrolled at the institution.

(4) "Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by

1 Section 61.003.

2 (5) "Sexual harassment" means unwelcome, sex-based
3 verbal or physical conduct that:

4 (A) in the employment context, unreasonably
5 interferes with a person's work performance or creates an
6 intimidating, hostile, or offensive work environment; or

7 (B) in the education context, is sufficiently
8 severe, persistent, or pervasive that the conduct interferes with a
9 student's ability to participate in or benefit from educational
10 programs or activities at a postsecondary educational institution.

11 Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS.

12 (a) An employee of a postsecondary educational institution who, in
13 the course and scope of employment, witnesses or receives
14 information regarding the occurrence of an incident that the
15 employee reasonably believes constitutes sexual harassment, sexual
16 assault, dating violence, or stalking and is alleged to have been
17 committed by or against a person who was a student enrolled at or an
18 employee of the institution at the time of the incident shall
19 promptly report the incident to the institution's Title IX
20 coordinator or deputy Title IX coordinator.

21 (b) Except as provided by Subsection (c), the report must
22 include all information concerning the incident known to the
23 reporting person that is relevant to the investigation and, if
24 applicable, redress of the incident, including whether an alleged
25 victim has expressed a desire for confidentiality in reporting the
26 incident.

27 (c) An employee of a postsecondary educational institution

1 designated by the institution as a person with whom students may
2 speak confidentially concerning sexual harassment, sexual assault,
3 dating violence, or stalking or who receives information regarding
4 such an incident under circumstances that render the employee's
5 communications confidential or privileged under other law shall, in
6 making a report under this section, state only the type of incident
7 reported and may not include any information that would violate a
8 student's expectation of privacy. This subsection does not affect
9 the employee's duty to report an incident under any other law.

10 (d) Notwithstanding Subsection (a), a person is not
11 required to make a report under this section concerning:

12 (1) an incident in which the person was a victim of
13 sexual harassment, sexual assault, dating violence, or stalking; or

14 (2) an incident of which the person received
15 information due to a disclosure made at a sexual harassment, sexual
16 assault, dating violence, or stalking public awareness event
17 sponsored by a postsecondary educational institution or by a
18 student organization affiliated with the institution.

19 Sec. 51.253. ADMINISTRATIVE REPORTING REQUIREMENTS.

20 (a) Not less than once every three months, the Title IX
21 coordinator of a postsecondary educational institution shall
22 submit to the institution's chief executive officer a written
23 report on the reports received under Section 51.252, including
24 information regarding:

25 (1) the investigation of those reports;

26 (2) the disposition, if any, of any disciplinary
27 processes arising from those reports; and

1 (3) the reports for which the institution determined
2 not to initiate a disciplinary process, if any.

3 (b) The Title IX coordinator or deputy Title IX coordinator
4 of a postsecondary educational institution shall immediately
5 report to the institution's chief executive officer an incident
6 reported to the coordinator under Section 51.252 if the coordinator
7 has cause to believe that the safety of any person is in imminent
8 danger as a result of the incident.

9 (c) Subject to Subsection (d), at least once during each
10 fall or spring semester, the chief executive officer of a
11 postsecondary educational institution shall submit to the
12 institution's governing body and post on the institution's Internet
13 website a report concerning the reports received under Section
14 51.252. The report:

15 (1) may not identify any person; and

16 (2) must include:

17 (A) the number of reports received under Section
18 51.252;

19 (B) the number of investigations conducted as a
20 result of those reports;

21 (C) the disposition, if any, of any disciplinary
22 processes arising from those reports;

23 (D) the number of those reports for which the
24 institution determined not to initiate a disciplinary process, if
25 any; and

26 (E) any disciplinary actions taken under Section
27 51.255.

1 (d) If for any semester a postsecondary educational
2 institution has fewer than 1,500 enrolled students, the chief
3 executive officer of the institution shall submit and post a report
4 required under Subsection (c) for that semester only if more than
5 five reports were received under Section 51.252 during that
6 semester.

7 Sec. 51.254. IMMUNITIES. (a) A person acting in good
8 faith who reports or assists in the investigation of a report of an
9 incident described by Section 51.252(a) or who testifies or
10 otherwise participates in a disciplinary process or judicial
11 proceeding arising from a report of such an incident:

12 (1) is immune from civil liability, and from criminal
13 liability for offenses punishable by fine only, that might
14 otherwise be incurred or imposed as a result of those actions; and

15 (2) may not be subjected to any disciplinary action by
16 the postsecondary educational institution at which the person is
17 enrolled or employed for any violation by the person of the
18 institution's code of conduct reasonably related to the incident
19 for which suspension or expulsion from the institution is not a
20 possible punishment.

21 (b) Subsection (a) does not apply to a person who
22 perpetrates or assists in the perpetration of the incident reported
23 under Section 51.252.

24 Sec. 51.255. FAILURE TO REPORT OR FALSE REPORT; OFFENSES.

25 (a) A person commits an offense if the person:

26 (1) is required to make a report under Section 51.252
27 and knowingly fails to make the report; or

1 (2) with the intent to harm or deceive, knowingly
2 makes a report under Section 51.252 that is false.

3 (b) An offense under Subsection (a) is a Class B
4 misdemeanor, except that the offense is a Class A misdemeanor if it
5 is shown on the trial of the offense that the actor intended to
6 conceal the incident that the actor was required to report under
7 Section 51.252.

8 (c) A postsecondary educational institution shall terminate
9 the employment of an employee whom the institution determines in
10 accordance with the institution's disciplinary procedure to have
11 committed an offense under Subsection (a).

12 Sec. 51.256. CONFIDENTIALITY. (a) Unless waived in
13 writing by the alleged victim, the identity of an alleged victim of
14 an incident reported under Section 51.252:

15 (1) is confidential and not subject to disclosure
16 under Chapter 552, Government Code; and

17 (2) may be disclosed only to:

18 (A) persons employed by or under contract with
19 the postsecondary educational institution to which the report is
20 made who are necessary to conduct an investigation of the report or
21 any related hearings;

22 (B) a law enforcement officer as necessary to
23 conduct a criminal investigation of the report;

24 (C) the person or persons alleged to have
25 perpetrated the incident, to the extent required by other law; or

26 (D) potential witnesses to the incident as
27 necessary to conduct an investigation of the report.

1 (b) A disclosure under Subsection (a) is not a voluntary
2 disclosure for purposes of Section 552.007, Government Code.

3 (c) Nothing in this section may be construed as prohibiting
4 a victim from making a report to a law enforcement agency using the
5 pseudonym form described by Article 57.02, Code of Criminal
6 Procedure.

7 Sec. 51.257. RETALIATION PROHIBITED. (a) A postsecondary
8 educational institution may not discipline or otherwise
9 discriminate against an employee who in good faith:

10 (1) makes a report as required by Section 51.252; or
11 (2) cooperates with an investigation, a disciplinary
12 process, or a judicial proceeding relating to a report made by the
13 employee as required by Section 51.252.

14 (b) Subsection (a) does not apply to an employee who:

15 (1) reports an incident described by Section 51.252(a)
16 perpetrated by the employee; or

17 (2) cooperates with an investigation, a disciplinary
18 process, or a judicial proceeding relating to an allegation that
19 the employee perpetrated an incident described by Section
20 51.252(a).

21 Sec. 51.258. COMPLIANCE. (a) The chief executive officer
22 of each postsecondary educational institution shall annually
23 certify in writing to the coordinating board that the institution
24 is in substantial compliance with this subchapter.

25 (b) If the coordinating board determines that a
26 postsecondary educational institution is not in substantial
27 compliance with this subchapter, the coordinating board may assess

1 an administrative penalty against the institution in an amount not
2 to exceed \$2 million. In determining the amount of the penalty, the
3 coordinating board shall consider the nature of the violation and
4 the number of students enrolled at the institution.

5 (c) If the coordinating board assesses an administrative
6 penalty against a postsecondary educational institution under
7 Subsection (b), the coordinating board shall provide to the
8 institution written notice of the coordinating board's reasons for
9 assessing the penalty.

10 (d) A postsecondary educational institution assessed an
11 administrative penalty under Subsection (b) may appeal the penalty
12 in the manner provided by Chapter 2001, Government Code.

13 (e) A postsecondary educational institution may not pay an
14 administrative penalty assessed under Subsection (b) using state or
15 federal money.

16 (f) An administrative penalty collected under this section
17 shall be deposited to the credit of the sexual assault program fund
18 established under Section 420.008, Government Code.

19 (g) The coordinating board shall annually submit to the
20 governor, the lieutenant governor, the speaker of the house of
21 representatives, and the standing legislative committees with
22 primary jurisdiction over legislation concerning sexual assault at
23 postsecondary educational institutions a report regarding
24 compliance with this subchapter, including a summary of the
25 postsecondary educational institutions found not to be in
26 substantial compliance as provided by this section and any
27 penalties assessed under this section during the calendar year

1 preceding the date of the report.

2 Sec. 51.259. RULES. The coordinating board shall adopt
3 rules as necessary to implement and enforce this subchapter,
4 including rules that ensure implementation of this subchapter in a
5 manner that complies with federal law regarding confidentiality of
6 student educational information, including the Family Educational
7 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). In
8 adopting those rules, the coordinating board shall use the
9 negotiated rulemaking procedures under Chapter 2008, Government
10 Code, and consult with relevant stakeholders.

11 Sec. 51.260. TRAINING ADVISORY COMMITTEE. (a) The
12 commissioner of higher education shall establish an advisory
13 committee to develop recommended training for persons required to
14 report certain incidents under Section 51.252 and for Title IX
15 coordinators and deputy Title IX coordinators at postsecondary
16 educational institutions.

17 (b) The advisory committee consists of nine members
18 appointed by the commissioner of higher education as follows:

19 (1) eight members who are a chief executive officer of
20 a postsecondary educational institution or a representative
21 designated by that officer; and

22 (2) one member who is a representative of an advocacy
23 organization for victims of sexual assault or family violence.

24 (c) Not later than December 1, 2019, the advisory committee
25 shall develop the recommended training under Subsection (a).

26 (d) This section expires September 1, 2020.

27 SECTION 2. Section 61.0331, Education Code, is amended to

1 read as follows:

2 Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board
3 shall engage institutions of higher education in a negotiated
4 rulemaking process as described by Chapter 2008, Government Code,
5 when adopting a policy, procedure, or rule relating to:

6 (1) an admission policy regarding the common admission
7 application under Section 51.762, a uniform admission policy under
8 Section 51.807, graduate and professional admissions under Section
9 51.843, or the transfer of credit under Section 61.827;

10 (2) the allocation or distribution of funds, including
11 financial aid or other trusteed funds under Section 61.07761;

12 (3) the reevaluation of data requests under Section
13 51.406; ~~[or]~~

14 (4) compliance monitoring under Section 61.035; or

15 (5) the reporting of certain incidents of sexual
16 harassment, sexual assault, dating violence, or stalking under
17 Subchapter E-2, Chapter 51.

18 SECTION 3. Section 420.008(b), Government Code, is amended
19 to read as follows:

20 (b) The fund consists of:

21 (1) fees collected under:

22 (A) [~~(1)~~] Article 42A.653(a), Code of Criminal
23 Procedure;

24 (B) [~~(2)~~] Section 508.189, Government Code; and

25 (C) [~~(3)~~] Subchapter B, Chapter 102, Business &
26 Commerce Code, and deposited under Section 102.054 of that code;
27 and

1 (2) administrative penalties collected under Section
2 51.258, Education Code.

3 SECTION 4. Sections 51.251-51.259, Education Code, as added
4 by this Act, and Section 61.0331, Education Code, as amended by this
5 Act, apply beginning January 1, 2020.

6 SECTION 5. Not later than January 1, 2021, the Texas Higher
7 Education Coordinating Board shall submit its initial report
8 required under Section 51.258(g), Education Code, as added by this
9 Act.

10 SECTION 6. (a) Except as provided by Subsections (b) and
11 (c) of this section, this Act takes effect September 1, 2019.

12 (b) Section 51.260, Education Code, as added by this Act,
13 takes effect immediately if this Act receives a vote of two-thirds
14 of all the members elected to each house, as provided by Section 39,
15 Article III, Texas Constitution. If this Act does not receive the
16 vote necessary for immediate effect, Section 51.260, Education
17 Code, as added by this Act, takes effect September 1, 2019.

18 (c) Section 51.255(a), Education Code, as added by this Act,
19 takes effect January 1, 2020.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 212 passed the Senate on March 26, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 212 passed the House on May 22, 2019, by the following vote: Yeas 128, Nays 13, three present not voting.

Chief Clerk of the House

Approved:

Date

Governor

1 AN ACT

2 relating to sexual harassment, sexual assault, dating violence, and
3 stalking at public and private postsecondary educational
4 institutions; providing an administrative penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 51, Education Code, is amended by adding
7 Subchapter E-3 to read as follows:

8 SUBCHAPTER E-3. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING
9 VIOLENCE, AND STALKING

10 Sec. 51.281. DEFINITIONS. In this subchapter:

11 (1) "Coordinating board" means the Texas Higher
12 Education Coordinating Board.

13 (2) "Dating violence," "sexual assault," and
14 "stalking" have the meanings assigned by the Jeanne Clery
15 Disclosure of Campus Security Policy and Campus Crime Statistics
16 Act (20 U.S.C. Section 1092(f)(6)(A)).

17 (3) "Postsecondary educational institution" means an
18 institution of higher education or a private or independent
19 institution of higher education, as those terms are defined by
20 Section 61.003.

21 (4) "Sexual harassment" means unwelcome, sex-based
22 verbal or physical conduct that:

23 (A) in the employment context, unreasonably
24 interferes with a person's work performance or creates an

1 intimidating, hostile, or offensive work environment; or

2 (B) in the education context, is sufficiently
3 severe, persistent, or pervasive that the conduct interferes with a
4 student's ability to participate in or benefit from educational
5 programs or activities at a postsecondary educational institution.

6 Sec. 51.282. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT,
7 DATING VIOLENCE, AND STALKING. (a) Each postsecondary educational
8 institution shall adopt a policy on sexual harassment, sexual
9 assault, dating violence, and stalking applicable to each student
10 enrolled at and each employee of the institution. The policy must:

11 (1) include:

12 (A) definitions of prohibited behavior;

13 (B) sanctions for violations;

14 (C) the protocol for reporting and responding to
15 reports of sexual harassment, sexual assault, dating violence, and
16 stalking;

17 (D) interim measures to protect victims of sexual
18 harassment, sexual assault, dating violence, or stalking during the
19 pendency of the institution's disciplinary process, including
20 protection from retaliation, and any other accommodations
21 available to those victims at the institution; and

22 (E) a statement regarding:

23 (i) the importance of a victim of sexual
24 harassment, sexual assault, dating violence, or stalking going to a
25 hospital for treatment and preservation of evidence, if applicable,
26 as soon as practicable after the incident;

27 (ii) the right of a victim of sexual

1 harassment, sexual assault, dating violence, or stalking to report
2 the incident to the institution and to receive a prompt and
3 equitable resolution of the report; and

4 (iii) the right of a victim of a crime to
5 choose whether to report the crime to law enforcement, to be
6 assisted by the institution in reporting the crime to law
7 enforcement, or to decline to report the crime to law enforcement;
8 and

9 (2) be approved by the institution's governing board
10 before final adoption by the institution.

11 (b) Each postsecondary educational institution shall make
12 the institution's sexual harassment, sexual assault, dating
13 violence, and stalking policy available to students, faculty, and
14 staff members by:

15 (1) including the policy in the institution's student
16 handbook and personnel handbook; and

17 (2) creating and maintaining a web page dedicated
18 solely to the policy that is easily accessible through a clearly
19 identifiable link on the institution's Internet website home page.

20 (c) Each postsecondary educational institution shall
21 require each entering freshman or undergraduate transfer student to
22 attend an orientation on the institution's sexual harassment,
23 sexual assault, dating violence, and stalking policy before or
24 during the first semester or term in which the student is enrolled
25 at the institution. The institution shall establish the format and
26 content of the orientation. The orientation:

27 (1) may be provided online; and

1 (2) must include the statements described by
2 Subsection (a)(1)(E).

3 (d) Each postsecondary educational institution shall
4 develop and implement a comprehensive prevention and outreach
5 program on sexual harassment, sexual assault, dating violence, and
6 stalking. The program must:

7 (1) address a range of strategies to prevent sexual
8 harassment, sexual assault, dating violence, and stalking,
9 including a victim empowerment program, a public awareness
10 campaign, primary prevention, bystander intervention, and risk
11 reduction; and

12 (2) include providing to students information
13 regarding the protocol for reporting incidents of sexual
14 harassment, sexual assault, dating violence, and stalking adopted
15 under Subsection (a), including the name, office location, and
16 contact information of the institution's Title IX coordinator, by:

17 (A) e-mailing the information to each student at
18 the beginning of each semester or other academic term; and

19 (B) including the information in the orientation
20 required under Subsection (c).

21 (e) As part of the protocol for responding to reports of
22 sexual harassment, sexual assault, dating violence, and stalking
23 adopted under Subsection (a), each postsecondary educational
24 institution shall:

25 (1) to the greatest extent practicable based on the
26 number of counselors employed by the institution, ensure that each
27 alleged victim or alleged perpetrator of an incident of sexual

1 harassment, sexual assault, dating violence, or stalking and any
2 other person who reports such an incident are offered counseling
3 provided by a counselor who does not provide counseling to any other
4 person involved in the incident; and

5 (2) notwithstanding any other law, allow an alleged
6 victim or alleged perpetrator of an incident of sexual harassment,
7 sexual assault, dating violence, or stalking to drop a course in
8 which both parties are enrolled without any academic penalty.

9 (f) Each biennium, each postsecondary educational
10 institution shall review the institution's sexual harassment,
11 sexual assault, dating violence, and stalking policy and, with
12 approval of the institution's governing board, revise the policy as
13 necessary.

14 Sec. 51.285. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an
15 alleged victim of an incident of sexual harassment, sexual assault,
16 dating violence, or stalking reported to a postsecondary
17 educational institution requests the institution not to
18 investigate the alleged incident, the institution may investigate
19 the alleged incident in a manner that complies with the
20 confidentiality requirements under Section 51.291. In determining
21 whether to investigate the alleged incident, the institution shall
22 consider:

23 (1) the seriousness of the alleged incident;

24 (2) whether the institution has received other reports
25 of sexual harassment, sexual assault, dating violence, or stalking
26 committed by the alleged perpetrator or perpetrators;

27 (3) whether the alleged incident poses a risk of harm

1 to others; and

2 (4) any other factors the institution determines
3 relevant.

4 (b) If a postsecondary educational institution decides not
5 to investigate an alleged incident of sexual harassment, sexual
6 assault, dating violence, or stalking based on the alleged victim's
7 request not to investigate, the institution shall take any steps
8 the institution determines necessary to protect the health and
9 safety of the institution's community in relation to the alleged
10 incident.

11 (c) A postsecondary educational institution shall inform an
12 alleged victim of an incident of sexual harassment, sexual assault,
13 dating violence, or stalking who requests the institution not to
14 investigate the alleged incident of the institution's decision
15 whether to investigate the alleged incident.

16 Sec. 51.286. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.
17 A postsecondary educational institution that initiates a
18 disciplinary process concerning an allegation that a student
19 enrolled at the institution violated the institution's code of
20 conduct by committing sexual harassment, sexual assault, dating
21 violence, or stalking shall:

22 (1) provide to the student and the alleged victim a
23 prompt and equitable opportunity to present witnesses and other
24 evidence relevant to the alleged violation during the disciplinary
25 process;

26 (2) ensure that both the student and the alleged
27 victim have reasonable and equitable access to all evidence

1 relevant to the alleged violation in the institution's possession,
2 including any statements made by the alleged victim or by other
3 persons, information stored electronically, written or electronic
4 communications, social media posts, or physical evidence, redacted
5 as necessary to comply with any applicable federal or state law
6 regarding confidentiality; and

7 (3) take reasonable steps to protect the student and
8 the alleged victim from retaliation and harassment during the
9 pendency of the disciplinary process.

10 Sec. 51.287. STUDENT WITHDRAWAL OR GRADUATION PENDING
11 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates from
12 a postsecondary educational institution pending a disciplinary
13 charge alleging that the student violated the institution's code of
14 conduct by committing sexual harassment, sexual assault, dating
15 violence, or stalking, the institution:

16 (1) may not end the disciplinary process or issue a
17 transcript to the student until the institution makes a final
18 determination of responsibility; and

19 (2) shall expedite the institution's disciplinary
20 process as necessary to accommodate both the student's and the
21 alleged victim's interest in a speedy resolution.

22 (b) On request by another postsecondary educational
23 institution, a postsecondary educational institution shall provide
24 to the requesting institution information relating to a
25 determination by the institution that a student enrolled at the
26 institution violated the institution's code of conduct by
27 committing sexual harassment, sexual assault, dating violence, or

1 stalking.

2 Sec. 51.288. TRAUMA-INFORMED INVESTIGATION TRAINING. Each
3 peace officer employed by a postsecondary educational institution
4 shall complete training on trauma-informed investigation into
5 allegations of sexual harassment, sexual assault, dating violence,
6 and stalking.

7 Sec. 51.289. MEMORANDA OF UNDERSTANDING REQUIRED. To
8 facilitate effective communication and coordination regarding
9 allegations of sexual harassment, sexual assault, dating violence,
10 and stalking at the institution, a postsecondary educational
11 institution shall enter into a memorandum of understanding with one
12 or more:

- 13 (1) local law enforcement agencies;
14 (2) sexual harassment, sexual assault, dating
15 violence, or stalking advocacy groups; and
16 (3) hospitals or other medical resource providers.

17 Sec. 51.290. RESPONSIBLE AND CONFIDENTIAL EMPLOYEE;
18 STUDENT ADVOCATE. (a) Each postsecondary educational institution
19 shall:

- 20 (1) designate:
21 (A) one or more employees to act as responsible
22 employees for purposes of Title IX of the Education Amendments of
23 1972 (20 U.S.C. Section 1681 et seq.); and

- 24 (B) one or more employees as persons to whom
25 students enrolled at the institution may speak confidentially
26 concerning sexual harassment, sexual assault, dating violence, and
27 stalking; and

1 (2) inform each student enrolled at the institution of
2 the responsible and confidential employees designated under
3 Subdivision (1).

4 (b) A postsecondary educational institution may designate
5 one or more students enrolled at the institution as student
6 advocates to whom other students enrolled at the institution may
7 speak confidentially concerning sexual harassment, sexual assault,
8 dating violence, and stalking. The institution shall notify each
9 student enrolled at the institution of the student advocates
10 designated under this subsection.

11 (c) A confidential employee designated under Subsection
12 (a)(1)(B) or a student advocate designated under Subsection (b) may
13 not disclose any communication made by a student to the employee or
14 advocate unless the student consents to the disclosure or the
15 employee or advocate is required to make the disclosure under state
16 or federal law.

17 Sec. 51.291. CONFIDENTIALITY. (a) The protections
18 provided by this section apply to:

19 (1) an alleged victim of an incident of sexual
20 harassment, sexual assault, dating violence, or stalking reported
21 to a postsecondary educational institution;

22 (2) a person who reports to a postsecondary
23 educational institution an incident of sexual harassment, sexual
24 assault, dating violence, or stalking, who sought guidance from the
25 institution concerning such an incident, or who participated in the
26 institution's investigation of such an incident; and

27 (3) a person who is alleged in a report made to a

1 postsecondary educational institution to have committed or
2 assisted in the commission of sexual harassment, sexual assault,
3 dating violence, or stalking if, after completing an investigation,
4 the institution determines the report to be unsubstantiated or
5 without merit.

6 (b) Unless waived in writing by the person, the identity of
7 a person described by Subsection (a):

8 (1) is confidential and not subject to disclosure
9 under Chapter 552, Government Code; and

10 (2) may be disclosed only to:

11 (A) the postsecondary educational institution to
12 which the report described by Subsection (a) is made as necessary to
13 conduct an investigation of the report;

14 (B) a law enforcement officer as necessary to
15 conduct a criminal investigation of the report described by
16 Subsection (a); or

17 (C) a health care provider in an emergency
18 situation, as determined necessary by the institution.

19 (c) A disclosure under Subsection (b) is not a voluntary
20 disclosure for purposes of Section 552.007, Government Code.

21 (d) Information regarding an incident of sexual harassment,
22 sexual assault, dating violence, or stalking disclosed to a health
23 care provider or other medical provider employed by a postsecondary
24 educational institution is confidential and may be shared by the
25 provider only with the victim's consent. The provider must provide
26 aggregate data or other nonidentifying information regarding those
27 incidents to the institution's Title IX coordinator.

1 Sec. 51.292. COMPLIANCE. (a) If the coordinating board
2 determines that a postsecondary educational institution is not in
3 substantial compliance with this subchapter, the coordinating
4 board may assess an administrative penalty against the institution
5 in an amount not to exceed \$2 million. In determining the amount of
6 the penalty, the coordinating board shall consider the nature of
7 the violation and the number of students enrolled at the
8 institution.

9 (b) If the coordinating board assesses an administrative
10 penalty against a postsecondary educational institution under
11 Subsection (a), the coordinating board shall provide to the
12 institution written notice of the coordinating board's reasons for
13 assessing the penalty.

14 (c) A postsecondary educational institution assessed an
15 administrative penalty under Subsection (a) may appeal the penalty
16 in the manner provided by Chapter 2001, Government Code.

17 (d) A postsecondary educational institution may not pay an
18 administrative penalty assessed under Subsection (a) using state or
19 federal money.

20 (e) An administrative penalty collected under this section
21 shall be deposited to the credit of the sexual assault program fund
22 established under Section 420.008, Government Code.

23 (f) The coordinating board shall annually submit to the
24 governor, the lieutenant governor, the speaker of the house of
25 representatives, and the standing legislative committees with
26 primary jurisdiction over legislation concerning sexual assault at
27 postsecondary educational institutions a report regarding

1 compliance with this subchapter, including a summary of the
2 postsecondary educational institutions found not to be in
3 substantial compliance as provided by this section and any
4 penalties assessed under this section during the preceding year.

5 Sec. 51.293. EQUAL ACCESS. In implementing the
6 requirements under this subchapter, a postsecondary educational
7 institution shall, to the greatest extent practicable, ensure equal
8 access for students enrolled at or employees of the institution who
9 are persons with disabilities. The institution shall make
10 reasonable efforts to consult with a disability services office of
11 the institution, advocacy groups for people with disabilities, and
12 other relevant stakeholders to assist the institution with
13 complying with the institution's duties under this section.

14 Sec. 51.294. ADVISORY COMMITTEE. (a) The commissioner of
15 higher education shall establish an advisory committee to:

16 (1) make recommendations to the coordinating board
17 regarding rules for adoption under Section 51.295; and

18 (2) develop recommended training for responsible and
19 confidential employees designated under Section 51.290 and for
20 Title IX coordinators at postsecondary educational institutions.

21 (b) The advisory committee consists of nine members
22 appointed by the commissioner of higher education. Each member
23 must be a chief executive officer of a postsecondary educational
24 institution or a representative designated by that officer.

25 (c) The advisory committee shall annually review and, if
26 necessary, update the training recommended under Subsection
27 (a)(2).

1 Sec. 51.295. RULES. (a) The coordinating board shall adopt
2 rules as necessary to implement and enforce this subchapter,
3 including rules that:

4 (1) define relevant terms; and

5 (2) ensure implementation of this subchapter in a
6 manner that complies with federal law regarding confidentiality of
7 student educational information, including the Family Educational
8 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

9 (b) In adopting rules under this section, the coordinating
10 board shall consult with relevant stakeholders.

11 SECTION 2. Sections 51.9365(b), (c), and (d), Education
12 Code, are transferred to Subchapter E-3, Chapter 51, Education
13 Code, as added by this Act, redesignated as Section 51.283,
14 Education Code, and amended to read as follows:

15 Sec. 51.283. ELECTRONIC REPORTING OPTION. (a) [~~(b)~~] Each
16 postsecondary educational institution shall provide an option for a
17 student enrolled at or an employee of the institution to
18 electronically report to the institution an allegation of sexual
19 harassment, sexual assault, dating violence, or stalking committed
20 against or witnessed by the student or employee, regardless of the
21 location at which the alleged offense occurred.

22 (b) [~~(c)~~] The electronic reporting option provided under
23 Subsection (a) [~~(b)~~] must:

24 (1) enable a student or employee to report the alleged
25 offense anonymously; and

26 (2) be easily accessible through a clearly
27 identifiable link on the postsecondary educational institution's

1 Internet website home page.

2 (c) [~~(d)~~] A protocol for reporting sexual assault adopted
3 under Section 51.282 [~~51.9363~~] must comply with this section.

4 SECTION 3. Sections 51.9366(b), (c), (d), (e), and (f),
5 Education Code, are transferred to Subchapter E-3, Chapter 51,
6 Education Code, as added by this Act, redesignated as Section
7 51.284, Education Code, and amended to read as follows:

8 Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN

9 INCIDENTS. (a) [~~(b)~~] A postsecondary educational institution may
10 not take any disciplinary action against a student enrolled at the
11 institution who in good faith reports to the institution being the
12 victim of, or a witness to, an incident of sexual harassment, sexual
13 assault, dating violence, or stalking for a violation by the
14 student of the institution's code of conduct occurring at or near
15 the time of the incident, regardless of the location at which the
16 incident occurred or the outcome of the institution's disciplinary
17 process regarding the incident, if any.

18 (b) [~~(c)~~] A postsecondary educational institution may
19 investigate to determine whether a report of an incident of sexual
20 harassment, sexual assault, dating violence, or stalking was made
21 in good faith.

22 (c) [~~(d)~~] A determination that a student is entitled to
23 amnesty under Subsection (a) [~~(b)~~] is final and may not be revoked.

24 (d) [~~(e)~~] Subsection (a) [~~(b)~~] does not apply to a student
25 who reports the student's own commission or assistance in the
26 commission of sexual harassment, sexual assault, dating violence,
27 or stalking.

1 (e) [~~(f)~~] This section may not be construed to limit a
2 postsecondary educational institution's ability to provide amnesty
3 from application of the institution's policies in circumstances not
4 described by Subsection (a) [~~(b)~~].

5 SECTION 4. The following provisions of the Education Code
6 are repealed:

- 7 (1) Section 51.9363;
- 8 (2) the heading to Sections 51.9365 and 51.9366;
- 9 (3) Sections 51.9365(a) and (e); and
- 10 (4) Sections 51.9366(a) and (g).

11 SECTION 5. The changes in law made by this Act apply
12 beginning August 1, 2020.

13 SECTION 6. Not later than September 1, 2021, the Texas
14 Higher Education Coordinating Board shall submit its initial report
15 required under Section 51.292(f), Education Code, as added by this
16 Act.

17 SECTION 7. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 1735 was passed by the House on April 17, 2019, by the following vote: Yeas 113, Nays 29, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1735 on May 23, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1735 on May 26, 2019, by the following vote: Yeas 109, Nays 30, 1 present, not voting.

Chief Clerk of the House

H.B. No. 1735

I certify that H.B. No. 1735 was passed by the Senate, with amendments, on May 16, 2019, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1735 on May 26, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

Chapter 3, RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING POLICIES FOR INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING

Subchapter A, REPORTING REQUIREMENTS FOR CERTAIN INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING AT CERTAIN PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION; AUTHORIZING ADMINISTRATIVE PENALTIES

- 3.1 Purpose
- 3.2 Authority
- 3.3 Definitions
- 3.4 Reporting Required for Certain Incidents
- 3.5 Administrative Reporting Requirements
- 3.6 Failure to Report or False Report
- 3.7 Confidentiality
- 3.8 Retaliation Prohibited
- 3.9 Compliance
- 3.10 Policy on Sexual Harassment, Sexual Assault, Dating Violence, And Stalking
- 3.11 Electronic Reporting Requirement
- 3.12 Victim Request Not to Investigate
- 3.13 Disciplinary Process for Certain Violations
- 3.14 Student Withdrawal or Graduation Pending Disciplinary Charges
- 3.15 Trauma-Informed Investigation Training
- 3.16 Memoranda of Understanding Required
- 3.17 Responsible and Confidential Employee; Student Advocate
- 3.18. Equal Access

3.1 Purpose

The purpose of this subchapter is to establish rules to require public, private, and independent institutions of higher education to adopt a policy on sexual harassment, sexual assault, dating

violence, and stalking; implement electronic reporting protocols for such incidents; develop a comprehensive prevention and outreach program; establish penalties for noncompliance; and provide amnesty or immunities to students and employees who report incidents of sexual assault.

3.2 Authority

Texas Education Code Subchapters E-2, Chapter 51, § 51.259 and Subchapter E-3, Chapter 51, § 51.295 authorize the Texas Higher Education Coordinating Board to adopt rules necessary to administer this Subchapter.

3.3 Definitions

(a) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(b) Dating violence—violence committed by a person:

(1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship;

(C) The frequency of interaction between the persons involved in the relationship.

(c) Postsecondary educational institution--an institution of higher education or a private or independent institution of higher education, as those terms are defined by Texas Education Code, §61.003.

(d) Sexual assault-- any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

(e) Sexual harassment--unwelcome, sex-based verbal or physical conduct that:

(1) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or

(2) 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.

(f) Stalking-- engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) fear for his or her safety or the safety of others; or

(2) suffer substantial emotional distress.

3.4 Reporting Required for Certain Incidents

(a) An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.

(b) Except as provided by Subsection (c), the report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.

(c) An employee of a postsecondary educational institution designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking or who receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law shall, in making a report under this section, state only the type of incident reported and may not include any information that would violate a student's expectation of privacy. This subsection does not affect the employee's duty to report an incident under any other law.

(d) Notwithstanding Subsection (a), a person is not required to make a report under this section concerning:

(1) an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking; or

(2) an incident of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational institution or by a student organization affiliated with the institution.

(e) A person acting in good faith who reports or assists in the investigation of a report of an incident described by § 3.4 (a) or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment.

(f) Subsection (e) does not apply to a person who perpetrates or assists in the perpetration of the incident reported under § 3.4 of this title.

3.5 Administrative Reporting Requirements

(a) Not less than once every three months, the Title IX coordinator of a postsecondary educational institution shall submit to the institution's chief executive officer a written report on the reports received under § 3.4 of this title (relating to Reporting Required for Certain Incidents), including information regarding:

- (1) the investigation of those reports;
- (2) the disposition, if any, of any disciplinary processes arising from those reports; and
- (3) the reports for which the institution determined not to initiate a disciplinary process, if any.

(b) The Title IX coordinator or deputy Title IX coordinator of a postsecondary educational institution shall immediately report to the institution's chief executive officer an incident reported to the coordinator under § 3.4 of this title if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

(c) Subject to Subsection (d), at least once during each fall or spring semester, the chief executive officer of a postsecondary educational institution shall submit to the institution's governing body and post on the institution's Internet website a report concerning the reports received under § 3.4 of this title. The report:

(1) may not identify any person; and

(2) must include:

(A) the number of reports received under § 3.4 of this title;

(B) the number of investigations conducted as a result of those reports;

(C) the disposition, if any, of any disciplinary processes arising from those reports;

(D) the number of those reports for which the institution determined not to initiate a disciplinary process, if any; and

(E) any disciplinary actions taken under § 3.6 of this title (relating to Failure to Report or False Report).

(d) If for any semester a postsecondary educational institution has fewer than 1,500 enrolled students, the chief executive officer of the institution shall submit and post a report required under Subsection (c) for that semester only if more than five reports were received under § 3.4 during that semester.

3.6 Failure to Report or False Report

A postsecondary educational institution shall terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedure to have committed an offense under Texas Education Code Sec. 51.255.

3.7 Confidentiality

(a) The protections provided by this section apply to:

(1) An alleged victim;

(2) a person who reports an incident to an institution; or

(3) a person who is alleged in a report made to an institution to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking, if after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

(b) Unless waived in writing by the person, the identity of a person described by Subsection (a):

(1) is confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) may be disclosed only to:

(A) persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary to investigate the report or any related hearings;

(B) a law enforcement officer as necessary to conduct a criminal investigation of the report described by Subsection (a); or

(C) a health care provider in an emergency, as determined necessary by the institution.

(D) the person or persons alleged to have perpetrated the incident, to the extent required by other law; or

(E) potential witnesses to the incident as necessary to conduct an investigation of the report.

3.8 Retaliation Prohibited

(a) A postsecondary educational institution may not discipline or otherwise discriminate against an employee who in good faith:

(1) makes a report as required by § 3.4 of this section; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee as required by rule 3.4.

(b) Subsection (a) does not apply to an employee who:

(1) reports an incident described by § 3.4 (a) perpetrated by the employee; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident described by rule 3.4 (a).

3.9 Compliance

(a) The chief executive officer of each postsecondary educational institution shall annually certify in writing to the Coordinating Board that the institution is in substantial compliance with this subchapter.

(b) If the coordinating board determines that a postsecondary educational institution is not in substantial compliance with this subchapter, the Coordinating Board may assess an administrative penalty against the institution in an amount not to exceed \$2 million. In determining the amount of the penalty, the Coordinating Board shall consider the nature of the violation and the number of students enrolled at the institution.

(c) If the Coordinating Board assesses an administrative penalty against a postsecondary educational institution under Subsection (b), the Coordinating Board shall provide to the institution written notice of the Coordinating Board's reasons for assessing the penalty.

(d) A postsecondary educational institution assessed an administrative penalty under Subsection (b) may appeal the penalty in the manner provided by Chapter 2001, Government Code.

(e) A postsecondary educational institution may not pay an administrative penalty assessed under Subsection (b) using state or federal money.

(f) The Coordinating Board shall deposit an administrative penalty collected under this section to the credit of the sexual assault program fund established under Section 420.008, Government Code.

(g) The Coordinating Board shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislative committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with this subchapter, including a summary of the postsecondary educational institutions found not to be in substantial compliance as provided by this section and any penalties assessed under this section during the calendar year preceding the date of the report.

3.10 Policy on Sexual Harassment, Sexual Assault, Dating Violence, And Stalking

(a) Each postsecondary educational institution shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each enrolled student and employee of the institution and have the policy approved by the institution's governing body. The policy must include:

(1) Definitions of prohibited behavior;

(2) Sanctions for violations;

(3) Protocol for reporting and responding to reports of sexual assault that complies with the electronic reporting requirement in Subsection 3.11 of this section;

(4) interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking pending the institution's disciplinary process, including protection from retaliation, and any other accommodations available to those victims at the institution; and

(5) a statement regarding:

(A) the importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;

(B) the right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and

(C) the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement;

(b) Each postsecondary educational institution shall make its policy on sexual harassment, sexual assault, dating violence, and stalking available to students, faculty, and staff members by:

(1) including the policy in the student handbook and personnel handbook; and

(2) creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's homepage.

(c) Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term of enrollment at the institution. The orientation:

(1) may be provided online; and

(2) must include the statements described by Subsection (a)(5) of this section.

(d) Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking for enrolled students and employees of the institution. The program must:

(1) address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a public awareness campaign; a victim empowerment program; primary prevention; bystander intervention; and risk reduction, and

- (2) provide students with information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking, including the name, office location, and contact information of the institution's Title IX coordinator, by:
- (A) e-mailing the information to each student at the beginning of each semester or other academic term;
 - (B) including the information in the institution's orientation; and
 - (C) as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under Subsection (a), each postsecondary educational institution shall:
 - (i) to the greatest extent practicable based on the number of counselors employed by the institution, ensure each alleged victim or alleged perpetrator of a sexual assault incident and any other person who reports such incidents are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident and;
 - (ii) notwithstanding any other law, allow an alleged victim or alleged perpetrator of a sexual assault incident to drop a course in which both parties are enrolled without any academic penalty.
- (e) Each postsecondary educational institution shall review its sexual harassment, sexual assault, dating violence, and stalking policy each biennium and revise the policy as necessary after securing approval from the institution's governing board.

3.11 Electronic Reporting

Each postsecondary educational institution shall provide an electronic reporting option for enrolled students or an employee to report an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must:

- (1) Allow for anonymous reporting; and
- (2) Be easily accessible via a clearly identifiable link on the institution's website home page.

3.12 Victim Request Not to Investigate

a) If an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution requests the institution not to investigate the alleged incident, the institution may investigate the alleged incident in a manner that complies with the confidentiality requirements under Texas Education Code Section 51.291.

In determining whether to investigate the alleged incident, the institution shall consider:

- (1) the seriousness of the alleged incident;
- (2) whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;
- (3) whether the alleged incident poses a risk of harm to others; and
- (4) any other factors the institution determines relevant.

(b) If a postsecondary educational institution decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking based on the alleged victim's request not to investigate, the institution shall take any steps the institution determines necessary to protect the health and safety of the institution's community in relation to the alleged incident.

(c) A postsecondary educational institution shall inform an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking who requests the institution not to investigate the alleged incident of the institution's decision whether to investigate the alleged incident.

3.13 Disciplinary Process for Certain Violations

A postsecondary educational institution that initiates a disciplinary process concerning an allegation that a student enrolled at the institution violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking shall:

(1) provide to the student and the alleged victim a prompt and equitable opportunity to present witnesses and other evidence relevant to the alleged violation during the disciplinary process;

(2) ensure that both the student and the alleged victim 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;
and

(3) take reasonable steps to protect the student and the alleged victim from retaliation and harassment during the pendency of the disciplinary process.

3.14 Student Withdrawal or Graduation Pending Disciplinary Charges

(a) If a student withdraws or graduates from a postsecondary educational institution pending a disciplinary charge alleging that the student violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking, the institution:

(1) may not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility; and

(2) shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

(b) On request by another postsecondary educational institution, a postsecondary educational institution shall provide to the requesting institution information relating to a determination by the institution that a student enrolled at the institution violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

3.15 Trauma-Informed Investigation Training

A postsecondary educational institution shall ensure each of its employed peace officers completes training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

3.16 Memoranda of Understanding Required

To facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the institution, a postsecondary educational institution shall enter into a memorandum of understanding with one or more:

- (1) local law enforcement agencies;
- (2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and
- (3) hospitals or other medical resource providers.

3.17 Responsible and Confidential Employee; Student Advocate.

(a) Each postsecondary educational institution shall:

(1) designate:

(A) one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.); and

(B) one or more employees as persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking; and

(2) inform each student enrolled at the institution of the responsible and confidential employees designated under Subdivision (1).

(b) A postsecondary educational institution may designate one or more students enrolled at the institution as student advocates to whom other students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. The institution shall notify each student enrolled at the institution of the student advocates designated under this subsection.

(c) A confidential employee designated under Subsection (a)(1)(B) or a student advocate designated under Subsection (b) may not disclose any communication made by a student to the employee or advocate unless the student consents to the disclosure or the employee or advocate is required to make the disclosure under state or federal law.

3.18. Equal Access

In implementing the requirements under this subchapter, a postsecondary educational institution shall, to the greatest extent practicable, ensure equal access for students enrolled at or employees of the institution who are persons with disabilities. The institution shall make reasonable efforts to consult with a disability services office of the institution, advocacy groups for people with disabilities, and other relevant stakeholders to assist the institution with complying with the institution's duties under this section.