

**Initial Review of Texas Education
Code, Chapter 51, Subchapter E-3
(*House Bill 1735, 86th Texas
Legislature, Regular Session*) Policy
Compliance Requirements at
Institutions of Higher Education**

**A Report to the Texas Legislature
Per Senate Bill 212 and House Bill 1735
86th Texas Legislature**

July 2021

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Texas Higher Education Coordinating Board



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Agency Mission

The mission of the Texas Higher Education Coordinating Board (THECB) is to provide leadership and coordination for Texas higher education and to promote access, affordability, quality, success, and cost efficiency through *60x30TX*, resulting in a globally competitive workforce that positions Texas as an international leader.

Agency Vision

The THECB will be recognized as an international leader in developing and implementing innovative higher education policy to accomplish our mission.

Agency Philosophy

The THECB will promote access to and success in quality higher education across the state with the conviction that access and success without quality is mediocrity and that quality without access and success is unacceptable.

The THECB's core values are:

Accountability: We hold ourselves responsible for our actions and welcome every opportunity to educate stakeholders about our policies, decisions, and aspirations.

Efficiency: We accomplish our work using resources in the most effective manner.

Collaboration: We develop partnerships that result in student success and a highly qualified, globally competent workforce.

Excellence: We strive for excellence in all our endeavors.

The Texas Higher Education Coordinating Board does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in employment or the provision of services.

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Executive Summary

Senate Bill (SB) 212 and House Bill (HB) 1735, passed by the 86th Texas Legislature, codified as Texas Education Code (TEC), Chapter 51, Subchapters E-2 and E-3, respectively, amend certain sections of TEC, Chapter 51, and enact several measures to: (1) improve the reporting of certain incidents of sexual harassment, sexual assault, dating violence, and stalking at public and private/independent institutions of higher education; and (2) enhance institutional policies and employee training regarding the reporting of such incidents.

Included in SB 212 and HB 1735 are directives that the Texas Higher Education Coordinating Board (THECB): (1) convene an advisory committee to develop recommended rules; (2) form a training advisory committee to develop recommended training for persons required to report certain incidents of sexual misconduct; (3) monitor institutions for compliance and assess penalties as necessary; and (4) submit required reports regarding compliance with the legislation.

The THECB submitted a report in January 2021 to comply with SB 212. This report is submitted to comply with HB 1735.

The THECB's Assistant Commissioner for Internal Audit and Compliance and his staff conducted the review of compliance required by HB 1735 in May 2021. The following summarizes institutions' compliance with the directives of HB 1735, including:

- institutions of higher education reviewed;
- summary of institutions found in substantial compliance; and
- summary of improvements recommended to two institutions and intended timeline to adopt recommendations.

Introduction

The 86th Texas Legislature recognized the need for accurate reporting of certain incidents of sexual harassment, sexual assault, dating violence, or stalking at public and private/independent institutions of higher education through its passage of Senate Bill (SB) 212 and House Bill (HB) 1735, each of which amend certain sections of the Texas Education Code (TEC), Chapter 51.

House Bill 1735, codified as TEC, Chapter 51, Subchapter E-3 (see [Appendix A](#)), requires postsecondary institutions to adopt a policy on sexual harassment, sexual assault, dating violence, or stalking, applicable to both enrolled students and employees. Senate Bill 212, codified as TEC, Chapter 51, Subchapter E-2 (see [Appendix B](#)), requires an employee of a public or private/independent institution of higher education who witnesses or is told about an incident involving sexual harassment, sexual assault, dating violence, or stalking 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 to report such incidents to the institution's Title IX coordinator.

Included in SB 212 and HB 1735 are directives that the Texas Higher Education Coordinating Board (THECB):

- (1) develop reporting rules through the negotiating rulemaking process to establish requirements for policies and procedures regarding sexual misconduct at postsecondary educational institutions;
- (2) form a training advisory committee to develop recommended training for persons required to report certain incidents of sexual harassment, sexual assault, dating violence, or stalking under TEC, Section 51.252, and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions;
- (3) monitor institutions for compliance and assess administrative penalties as necessary, in an amount not to exceed \$2 million; and
- (4) submit required reports regarding compliance 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, including a summary of the postsecondary educational institutions found not to be in substantial compliance and any penalties assessed during the calendar year.

The January 2021 report focused on compliance with the directives of SB 212. To satisfy the compliance monitoring and reporting directives of HB 1735, the THECB conducted the following activities:

- In accordance with requirements of TEC, Section 51.292, in May 2021, the THECB's Assistant Commissioner for Internal Audit and Compliance and his staff conducted the review of compliance required by HB 1735. Eighteen compliance requirements were reviewed.
- In accordance with requirements of TEC, Section 51.292(f), agency staff began making the necessary preparations to submit not later than September 1, 2021, its compliance report as specified in HB 1735.

HB 1735 Substantial Compliance Testing

Texas Education Code (TEC), Chapter 51, Subchapters E-2, and E-3, define the postsecondary educational institutions that must be in substantial compliance as an institution of higher education or a private or independent institution of higher education, as defined by TEC, Chapter 61, Section 61.003. Substantial compliance is defined in Texas Administrative Code, Title 19, Part 1, Chapter 3, Subchapter A, Section 3.3(f).

Statutory provisions found in TEC, Chapter 51, Subchapter E-3, were adopted by the Board of the THECB for inclusion in Texas Administrative Code, Title 19, Chapter 3, effective August 1, 2020. Compliance with TEC, Chapter 51, Subchapter E-3, was reviewed for the initial year by the THECB's Assistant Commissioner of Internal Audit and Compliance and his staff. Institutions of higher education selected for compliance testing included public universities, private universities, and two-year colleges. The selected institutions represented approximately 45% of the total student population for the 2020 school year.

Reports on substantial compliance were sent to the reviewed institutions (see, [Appendix C: Summary Results – An Initial Review of House Bill 1735 Policy Compliance Requirements at 19 Institutions of Higher Education](#)). All 19 of the reviewed institutions were found to be in substantial compliance. Substantial compliance is found when a postsecondary educational institution has made a good faith effort to comply with the requirements under the administrative rules, provided that the deficiencies identified by the THECB can be readily corrected.

Two of the institutions, Southwestern Christian College and Dallas College, were provided with improvement recommendations. The two institutions were given the opportunity to provide a management response to the recommended improvements. Both institutions provided a response to each recommendation and a timeline for expected completion of the recommendations.

No penalties were assessed during the initial year of compliance with either HB 1735 or SB 212.

Conclusion

Based on the requirements of HB 1735, 86th Texas Legislature, during the initial year of compliance:

- nineteen postsecondary educational institutions were sampled for substantial compliance;
- nineteen institutions were found to be in substantial compliance; and
- two institutions were provided with recommended improvements and are actively working toward implementing each of the recommendations.

The THECB will continue to provide support to postsecondary educational institutions as all institutions work toward substantial compliance with TEC, Chapter 51, Subchapter E-3 on an annual basis.

Appendix A: House Bill 1735, 86th Texas Legislature

AN ACT

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

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

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

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

Sec. 51.281. DEFINITIONS. In this subchapter:

- (1) "Coordinating board" means the Texas Higher Education Coordinating Board.
- (2) "Dating violence," "sexual assault," and "stalking" have the meanings assigned by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)(6)(A)).
- (3) "Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003.
- (4) "Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:
 - (A) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
 - (B) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

Sec. 51.282. 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 student enrolled at and each employee of the institution. The policy must:

(1) include:

(A) definitions of prohibited behavior;

(B) sanctions for violations;

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

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

(E) a statement regarding:

(i) 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;

(ii) 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

(iii) 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; and

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

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

(1) including the policy in the institution's 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 Internet website home page.

(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 in which the student is enrolled at the institution. The institution shall establish the format and content of the orientation. The orientation:

(1) may be provided online; and

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

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

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

(2) include providing to students information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking adopted under

Subsection (a), 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; and

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

(e) 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:

(1) to the greatest extent practicable based on the number of counselors employed by the institution, ensure that each alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking and any other person who reports such an incident are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and

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

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

Sec. 51.285. 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 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.

Sec. 51.286. 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.

Sec. 51.287. 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.

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

Sec. 51.289. 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.

Sec. 51.290. 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.

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

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

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

(3) a person who is alleged in a report made to a postsecondary educational 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) the postsecondary educational institution to which the report described by Subsection (a) is made as necessary to conduct an investigation of the report;

(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 situation, as determined necessary by the institution.

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

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

Sec. 51.292. COMPLIANCE. (a) 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.

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

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

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

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

(f) 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 preceding year.

Sec. 51.293. 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.

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

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

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

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

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

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

(1) define relevant terms; and

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

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

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

Sec. 51.283. ELECTRONIC REPORTING OPTION. (a) [(b)] Each postsecondary educational institution shall provide an option for a student enrolled at or an employee of the institution to electronically report to the institution 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.

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

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

(2) be easily accessible through a clearly identifiable link on the postsecondary educational institution's Internet website home page.

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

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

Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN INCIDENTS. (a) ~~[(b)]~~ A postsecondary educational institution may not take any disciplinary action against a student enrolled at the institution who in good faith reports to the institution being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the student of the institution's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the institution's disciplinary process regarding the incident, if any.

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

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

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

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

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

- (1) Section 51.9363;
- (2) the heading to Sections 51.9365 and 51.9366;

(3) Sections 51.9365(a) and (e); and

(4) Sections 51.9366(a) and (g).

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

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

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

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

Appendix B: Senate Bill 212, 86th Texas Legislature

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 Section 61.003.

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

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

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

Sec. 51.252. 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.

Sec. 51.253. 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 Section 51.252, 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 Section 51.252 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 Section 51.252. The report:

(1) may not identify any person; and

(2) must include:

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

(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 Section 51.255.

(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 Section 51.252 during that semester.

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

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

(2) 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.

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

Sec. 51.255. FAILURE TO REPORT OR FALSE REPORT; OFFENSES. (a) A person commits an offense if the person:

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

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

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

(c) 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 Subsection (a).

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

(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 conduct an investigation of the report or any related hearings;

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

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

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

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

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

Sec. 51.257. 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 Section 51.252; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee as required by Section 51.252.

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

(1) reports an incident described by Section 51.252(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 Section 51.252(a).

Sec. 51.258. 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) An administrative penalty collected under this section shall be deposited 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.

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

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

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

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

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

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

(d) This section expires September 1, 2020.

SECTION 2. Section 61.0331, Education Code, is amended 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 trusteed funds under Section 61.07761;

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

(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.

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

(b) The fund consists of:

(1) fees collected under:

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

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

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

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

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

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

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

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

(c) Section 51.255(a), Education Code, as added by this Act, 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

Appendix C: Summary Results – An Initial Review of House Bill 1735 Policy Compliance Requirements at 19 Institutions of Higher Education



TEXAS HIGHER EDUCATION COORDINATING BOARD

P. O. Box 12788 Austin, Texas 78711

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Harrison Keller, Ph.D.
COMMISSIONER
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May 28, 2021

Dr. Harrison Keller
Commissioner of Higher Education
Texas Higher Education Coordinating Board
1200 E. Anderson Lane
Austin, TX 78752

Dr. Keller,

I am attaching the final report of our *Summary Results – An Initial Review of House Bill 1735 Policy Compliance Requirements at 19 Institutions of Higher Education*. This information will be presented at the July 21, 2021 Committee on Academic and Workforce Success meeting.

We found the following:

- Substantial compliance was noted at 19 of the 19 institutions of higher education we reviewed, based on the 18 requirements identified in House Bill 1735, 86th Regular Legislative Session (HB-1735).
- Improvement recommendations were noted at two institutions of higher education. Those reports are attached for reference as Attachment 1 for Southwestern Christian College and Attachment 2 for Dallas College.

This report contains the results of our review in Table 1. The compliance requirements are illustrated in Table 2 and codified in Texas Education Code, Title 3, Subtitle A, Chapter 51, Subchapter E-3. The requirements became effective on September 1, 2019.

If you have any questions or comments, please let me know.

Sincerely,

Mark A. Poehl, CPA, CIA, CISA, CFE
Assistant Commissioner, Internal Audit and Compliance

Summary Results - An Initial Review of House Bill 1735 Policy Compliance Requirements at 19
Institutions of Higher Education
Report No. THECB-CM-DR-21-035-20
May 2021

1

Table 1. Institutions of Higher Education Reviewed

| Institution Type/Number | Institution | Results |
|--------------------------------|---|---|
| Public Universities | | |
| 1 | Texas A&M University | No Improvement Recommendations Noted |
| 2 | Texas Southern University | |
| 3 | Texas State University | |
| 4 | Texas Tech University | |
| 5 | The University of Texas at Austin | |
| 6 | University of Houston | |
| | | |
| Private Universities | | |
| 7 | Baylor University | No Improvement Recommendations Noted |
| 8 | Rice University | |
| 9 | Southern Methodist University | |
| 10 | Southwestern Christian College | Improvement Recommendations Noted |
| 11 | Texas Christian University | No Improvement Recommendations Noted |
| 12 | University of the Incarnate Word | |
| | | |
| Community Colleges | | |
| 13 | Alamo Colleges District | No Improvement Recommendations Noted |
| 14 | Austin Community College District | |
| 15 | Collin County Community College District | |
| 16 | Dallas College | Improvement Recommendations Noted |
| 17 | Houston Community College | No Improvement Recommendations Noted |
| 18 | Lone Star College | |
| 19 | Tarrant County College District | |

Table 2. Compliance Requirements Reviewed

| Item Number | Bill Reference by Section | Policy Compliance Requirements |
|--------------------|----------------------------------|--|
| 1 | 51.282(a)(1)(A) | A "Definitions" page and details prohibited behavior. |
| 2 | 51.282(a)(2) | Board-approved policy. |
| 3 | 51.282(b)(1) | Included in student handbook and personnel handbook. |
| 4 | 51.282(b)(2) | Dedicated webpage and clearly linked to the IHE homepage. |
| 5 | 51.282(c) | Requires each entering freshman or undergraduate transfer students to attend an orientation on the institution's policy. |
| 6 | 51.282(d) | Prevention and outreach program that addresses required elements. |
| 7 | 51.282(e)(1) and (2) | Protocol addresses counseling resources and must allow course drop. |
| 8 | 51.282(f) | Biennial review and governing board approval of policy revisions. |
| 9 | 51.283 | Electronic reporting option for an enrolled student or an IHE employee. |
| 10 | 51.284 | Provides "Amnesty for Students Reporting Certain Incidents". |
| 11 | 51.285 | Procedures for documenting a victim request not to investigate and to notify the victim of the IHE's decision whether it will investigate the alleged incident. |
| 12 | 51.286 | A disciplinary process for certain violations. |
| 13 | 51.287 | Protocol for when a student withdraws or graduates with pending disciplinary charges. |
| 14 | 51.288 | Trauma-informed investigation training to each peace officer employed by an IHE. |
| 15 | 51.289 | IHE has an MOU with one or more of the following: (1) local law enforcement agencies; (2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; or (3) hospitals or other medical resource providers. |
| 16 | 51.290 | Provides for at least one or more responsible employee, confidential employee, and student advocate. Responsible employee for the purposes of Title IX; (1) Confidential employee to whom enrolled students may speak confidentially; and (2) Student advocate is an enrolled student to whom an enrolled student may speak confidentially. |
| 17 | 51.291 | Addresses confidentiality adheres to these requirements stipulated in this sub-section. |
| 18 | 51.293 | Protocols address equal access for students enrolled at or employees of an IHE who are persons with disabilities. |

Attachment 1: Southwestern Christian College



TEXAS HIGHER EDUCATION COORDINATING BOARD

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May 27, 2021

Dr. Ervin D. Seamster, Jr.
President
Southwestern Christian College
200 Bowser Cir.
Terrell, Texas 75160

Dear Dr. Seamster, Jr.,

I am attaching the final report on our *Initial Review of House Bill 1735 Policy Compliance Requirements at Southwestern Christian College*, Report No. THECB-CM-DR-21-035-18. There were seven observations related to noncompliance with the requirements contained in Texas Education Code (TEC), Title 3, Subtitle A, Chapter 51, Subchapter E-3. Management's responses have been incorporated into the final report.

Summary

Southwestern Christian College (SwCC) substantially complied with the requirements contained in TEC, Title 3, Subtitle A, Chapter 51, Subchapter E-3. However, improvement is needed in seven of the eighteen areas reviewed, for which corresponding recommendations have been made.

This Compliance Monitoring report will be presented to the Texas Higher Education Coordinating Board (THECB) Committee on Academic and Workforce Success, a standing committee of the THECB Board, on July 21, 2021.

The cooperation of your staff during this review is greatly appreciated. If you have any questions or comments, please let me know.

Sincerely,

Mark A. Poehl, CPA, CIA, CISA, CFE
Assistant Commissioner, Internal Audit and Compliance

Initial Review of House Bill 1735 Policy Compliance Requirements at Southwestern Christian College
Report No. THECB-CM-DR-21-035-18
May 2021

1

EXECUTIVE SUMMARY

Southwestern Christian College (SwCC) substantially complied with the requirements of House Bill 1735 (HB-1735) as codified in Texas Education Code (TEC), Title 3, Subtitle A, Chapter 51, Subchapter E-3. There were seven of eighteen compliance requirements reviewed where improvement is required, including:

- Board of Trustees approval of the student conduct policies published in the academic catalog and/or student handbook.
- A hyperlink from SwCC's home page to its sexual assault and reporting (Title IX) related policies and procedures.
- Board of Trustees biennial review and approval of any policy revisions.
- A home page link (electronic reporting option) clearly indicating that it is for sexual assault reporting for students and employees of SwCC.
- A policy providing amnesty for students reporting certain incidents.
- Procedures for documenting a victim's request not to investigate and to notify the victim of SwCC's decision whether to investigate an alleged incident.
- Trauma-informed investigation training for SwCC law enforcement employees.

The audit team greatly appreciates the cooperation and assistance provided by SwCC and Academic Affairs and Workforce Education (AAWE) staff members during this review. We look forward to our ongoing collaborative efforts to ensure SwCC's compliance with HB-1735.

Review Objective, Scope and Methodologies

Our review objective was limited to reviewing compliance with specific HB-1735 compliance and reporting requirements as codified in TEC, Title 3, Subtitle A, Chapter 51, Subchapter E-3 for the institutions of higher education (IHE). We collaborated with AAWE and agreed that for the initial reporting cycle, our audit scope would be limited to certain criteria as noted in the Summary of Results section in this report.

We further agreed that our role would be to remain neutral in policy matters while providing an objective review regarding the nature and extent of the IHE's compliance with the requirements of HB-1735 for IHEs.

We reviewed the information submitted to the THECB, requested follow up information as needed, and performed limited testing to address the review objective.

Background

This review was included on the 2021 Compliance Monitoring Plan. Policy guidance and direction is centralized in the Academic Affairs and Workforce Education (AAWE) office under the Director, Private Postsecondary Institutions who also acts as the agency's Title IX Coordinator for Institutions.

The 86th Legislature enacted HB-1735, amending Texas Education Code (TEC), Title 3, Subtitle A, Chapter 51, by adding Subchapter E-3 requiring each postsecondary education institution to adopt a policy on sexual harassment, sexual assault, dating violence, and

stalking applicable to each student enrolled at and each employee of the institution. Further, Section 51.292(a) authorizes the coordinating board to assess an administrative penalty for failure of the IHE to show substantial compliance with the act.

Additionally, Section 51.292(f) requires the THECB to annually submit its report 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. The report will include 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. The initial report is to be filed not later than September 1, 2021. No penalties were assessed in this review period.

Detailed Observations, Recommendations, and Management Responses

Observation 1.

We were unable to ascertain whether the SwCC Board of Trustees approved a policy that covers the required elements of House Bill 1735 for its sexual assault and reporting (Title IX) policy. (51.282(a)(2))

Recommendation:

SwCC should include a provision in its sexual assault and reporting (Title IX) policy that ensures Board of Trustees approval.

Management Response:

The SwCC Board of Trustees/Academic Affairs' expected completion date is September 2, 2021.

Observation 2.

We were unable to locate a hyperlink from SwCC's home page to its Title IX policy. (51.282(b)(2))

Recommendation:

SwCC should create a link from its home page to the Title IX policy.

Management Response:

The SwCC Student Affairs/Webmaster's expected completion date is September 2, 2021 for adding the hyperlink.

Observation 3.

We were unable to ascertain whether SwCC has a process in place to conduct a biennial review of its Title IX policy that is approved by the Board of Trustees. (51.282(f))

Recommendation:

SwCC should include a provision in its Title IX policy that ensures that a biennial review will be conducted and approved by the Board of Trustees.

Management Response:

SwCC Board of Trustees expected completion date is September 8, 2021 to develop a biennial review.

Observation 4.

We were unable to locate a hyperlink from SwCC's home page to an electronic reporting option for students and employees of SwCC. (51.283)

Recommendation:

SwCC should create a link from its home page to an electronic reporting option for its students and employees to report incidents of sexual assault.

Management Response:

The SwCC Student Affairs/Webmaster's expected completion date is September 8, 2021 to add a page link.

Observation 5.

We were unable to locate clear guidance in SwCC's Title IX policy regarding amnesty for students reporting certain incidents. (51.284)

Recommendation:

SwCC should provide clear guidance within its Title IX policy regarding amnesty for students reporting certain incidents.

Management Response:

SwCC Student Affairs will develop a policy providing amnesty for students reporting certain incidents with an expected completion date of September 8, 2021.

Observation 6.

We were unable to locate a policy/procedure in SwCC's Title IX policy for documenting a victim's request not to investigate and to notify the victim of SwCC's decision whether to investigate an alleged incident. (51.285)

Recommendation:

SwCC should update its Title IX policy to include provisions for documenting a victim's request not to investigate and notifying the victim of SwCC's decision whether to investigate an alleged incident.

Management Response:

SwCC Student Affairs will develop a policy regarding a victim's request not to investigate and SwCC's decision whether to investigate with an expected completion date of September 14, 2021.

Observation 7.

We were unable to locate information to support whether SwCC law enforcement employees received trauma-informed investigation training. (51.288)

Recommendation:

SwCC should ensure that each of its law enforcement employees receive trauma-informed investigation training.

Management Response:

SwCC Campus Police is currently searching for a provider to provide the training with an expected completion date of September 8, 2021.

PERFORMED BY:

Mr. Bobby Lane, CFE, CICA, Compliance Specialist

cc:

THECB

Board Members

Commissioner's Office

Mr. Rey Rodriguez, Deputy Commissioner and Chief of Staff

Ms. Nichole Bunker-Henderson, General Counsel

Academic Affairs and Workforce Education

Mr. Ray Martinez, Deputy Commissioner of Academic Affairs and Workforce Education

Dr. Stacey Silverman, Assistant Commissioner, Academic and Health Affairs

Dr. Tina Jackson, Assistant Commissioner, Workforce Education

Ms. Cathie Maeyaert, Director, Private Postsecondary Institutions/Title IX Coordinator-Institutions

Southwestern Christian College

Mr. Matthew L. Terry, Sr., Commissioner/Chief of Police

STATUTORY DISTRIBUTION REQUIREMENT

Governor's Office - Budget and Policy Division

Ms. Sarah Hicks, Director

State Auditor's Office

Internal Audit Coordinator

Legislative Budget Board

Mr. Christopher Mattson, Manager

Sunset Advisory Commission

Ms. Jennifer Jones, Executive Director

Summary of Results

| Item Number | Bill Reference by Section | Policy Compliance Requirements | Compliance Assessment |
|-------------|---------------------------|---|---|
| 1 | 51.282 (a)(1)(A) | A "Definitions" page and details prohibited behavior. | No Improvement Recommendations Noted |
| 2 | 51.282(a)(2) | Board-approved policy. | Improvement Recommendations Noted |
| 3 | 51.282(b)(1) | Included in student handbook and personnel handbook. | No Improvement Recommendations Noted |
| 4 | 51.282(b)(2) | Dedicated webpage and clearly linked to the IHE homepage. | Improvement Recommendations Noted |
| 5 | 51.282(c) | Requires each entering freshman or undergraduate transfer students to attend an orientation on the institution's policy. | No Improvement Recommendations Noted |
| 6 | 51.282(d) | Prevention and outreach program that addresses required elements. | No Improvement Recommendations Noted |
| 7 | 51.282(e)(1) and (2) | Protocol addresses counseling resources and must allow course drop. | No Improvement Recommendations Noted |
| 8 | 51.282(f) | Biennial review and governing board approval of policy revisions. | Improvement Recommendations Noted |
| 9 | 51.283 | Electronic reporting option for an enrolled student or an IHE employee. | Improvement Recommendations Noted |
| 10 | 51.284 | Provides "Amnesty for Students Reporting Certain Incidents". | Improvement Recommendations Noted |
| 11 | 51.285 | Procedures for documenting a victim request not to investigate and to notify the victim of the IHE's decision whether it will investigate the alleged incident. | Improvement Recommendations Noted |
| 12 | 51.286 | A disciplinary process for certain violations. | No Improvement Recommendations Noted |
| 13 | 51.287 | Protocol for when a student withdraws or graduates with pending disciplinary charges. | No Improvement Recommendations Noted |
| 14 | 51.288 | Trauma-informed investigation training to each peace officer employed by an IHE. | Improvement Recommendations Noted |
| 15 | 51.289 | IHE has an MOU with one or more of the following: (1) local law enforcement agencies; (2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; or | No Improvement Recommendations Noted |

| | | | |
|----|--------|---|---|
| | | (3) hospitals or other medical resource providers. | |
| 16 | 51.290 | Provides for at least one or more responsible employee, confidential employee, and student advocate. Responsible employee for the purposes of Title IX; (1) Confidential employee to whom enrolled students may speak confidentially; and (2) Student advocate is an enrolled student to whom an enrolled student may speak confidentially. | No Improvement Recommendations Noted |
| 17 | 51.291 | Addresses confidentiality adheres to these requirements stipulated in this sub-section. | No Improvement Recommendations Noted |
| 18 | 51.293 | Protocols address equal access for students enrolled at or employees of an IHE who are persons with disabilities. | No Improvement Recommendations Noted |

Attachment 2: Dallas College



TEXAS HIGHER EDUCATION COORDINATING BOARD

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CHAIR

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May 28, 2021

Dr. Joe May
Chancellor
Dallas College
1601 S. Lamar St.
Dallas, Texas 75215

Dear Dr. May,

I am attaching the final report on our *Initial Review of House Bill 1735 Policy Compliance Requirements at Dallas College*, Report No. THECB-CM-DR-21-035-8. There were four observations related to noncompliance with the requirements contained in Texas Education Code (TEC), Title 3, Subtitle A, Chapter 51, Subchapter E-3. Management's responses have been incorporated into the final report. The attachments referenced in the management response have not been included in this report but are available on request.

Summary

Dallas College substantially complied with the requirements contained in TEC, Title 3, Subtitle A, Chapter 51, Subchapter E-3. However, improvement is needed in four of the eighteen areas reviewed, for which corresponding recommendations have been made.

This Compliance Monitoring report will be presented to the Texas Higher Education Coordinating Board (THECB) Committee on Academic and Workforce Success, a standing committee of the THECB Board, on July 21, 2021.

The cooperation of your staff during this review is greatly appreciated. If you have any questions or comments, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Carol Conner".

Carol Conner, CFE
Senior Compliance Specialist
Internal Audit and Compliance Monitoring

Initial Review of House Bill 1735 Policy Compliance Requirements at Dallas College
Report No. THECB-CM-DR-21-035-8
May 2021

1

AN EQUAL OPPORTUNITY EMPLOYER

EXECUTIVE SUMMARY

Dallas College substantially complied with the requirements of House Bill 1735 (HB-1735) as codified in Texas Education Code (TEC), Title 3, Subtitle A, Chapter 51, Subchapter E-3. There were four of eighteen compliance requirements reviewed where improvement is required, including:

- Board of Trustees biennial review and approval of any policy revisions.
- A policy providing amnesty for students reporting certain incidents.
- Procedures for when a student withdraws or graduates with pending disciplinary charges.
- Provisions for at least one or more responsible employee, confidential employee, and student advocate. Responsible employee for the purposes of Title IX;
 - (1) Confidential employee to whom enrolled students may speak confidentially; and
 - (2) Student advocate is an enrolled student to whom an enrolled student may speak confidentially?

The audit team greatly appreciates the cooperation and assistance provided by Dallas College and Academic Affairs and Workforce Education (AAWE) staff members during this review. We look forward to our ongoing collaborative efforts to ensure Dallas College's compliance with HB-1735.

Review Objective, Scope and Methodologies

Our review objective was limited to reviewing compliance with specific HB-1735 compliance and reporting requirements as codified in TEC, Title 3, Subtitle A, Chapter 51, Subchapter E-3 for the institutions of higher education (IHE). We collaborated with AAWE and agreed that for the initial reporting cycle, our audit scope would be limited to certain criteria as noted in the Summary of Results section in this report.

We further agreed that our role would be to remain neutral in policy matters while providing an objective review regarding the nature and extent of the IHE's compliance with the requirements of HB-1735 for IHEs.

We reviewed the information submitted to the THECB, requested follow up information as needed, and performed limited testing to address the review objective.

Background

This review was included on the 2021 Compliance Monitoring Plan. Policy guidance and direction is centralized in the Academic Affairs and Workforce Education (AAWE) office under the Director, Private Postsecondary Institutions who also acts as the agency's Title IX Coordinator for Institutions.

The 86th Legislature enacted HB-1735, amending Texas Education Code (TEC), Title 3, Subtitle A, Chapter 51, by adding Subchapter E-3 requiring each postsecondary education institution to adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each student enrolled at and each employee of the institution. Further, Section 51.292(a) authorizes the coordinating board to assess an administrative penalty for failure of the IHE to show substantial compliance with the act.

Additionally, Section 51.292(f) requires the THECB to annually submit its report 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. The report will include 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. The initial report is to be filed not later than September 1, 2021. No penalties were assessed in this review period.

Detailed Observations, Recommendations, and Management Responses

Observation 1.

We were unable to ascertain whether Dallas College has a process in place to conduct a biennial review of its Title IX policy that is approved by the Board of Trustees. (51.282(f))

Recommendation:

Dallas College should include a provision in its Title IX policy that ensures that a biennial review will be conducted and approved by the Board of Trustees.

Management Response:

Biennial review of the College's Sexual Misconduct Policy is not currently specified in College policy. However, it is current practice for the College to review this policy, and related procedures, on at least a biennial basis.

A substantive review was conducted in 2020 to incorporate HB 1735 requirements, as well as those imposed by the new federal regulations relating to Title IX. The next review of the policy and relating procedures is scheduled for 2022.

In addition, the attached amendments to the College's Board policies addressing sexual misconduct, which include the addition of language requiring biennial review, will be presented to the College Board of Trustees for consideration (June 2021) and approval (August 2021). [See DIAA and FFDA (LOCAL)]. Once approved by the Board, the language will be incorporated into the s College Board Policy Manual.

Observation 2.

We were unable to locate clear guidance in Dallas College's Title IX policy regarding amnesty for students reporting certain incidents. (51.284)

Recommendation:

Dallas College should provide clear guidance within its Title IX policy regarding amnesty for students reporting certain incidents.

Management Response:

The provision of amnesty for students reporting certain incidents is not specified in current policy; however, its inclusion is pending.

The College Student Code of Conduct, including FLB, FMA, and FM (LOCAL), is currently under review. Revisions to those policies, including the attached draft amendment, which addresses the provision of amnesty, will be presented to the Dallas College Board of Trustees for consideration (June 2021) and approval (August 2021). [See FLB (LOCAL), pg. 7] Once approved by the Board, the language will be incorporated into the College Board Policy Manual.

Observation 3.

We were unable to locate provisions for when a student withdraws or graduates with pending disciplinary charges. (51.287)

Recommendation:

Dallas College should develop and implement provisions for when a student withdraws or graduates with pending disciplinary charges.

Management Response:

A provision relating to student withdrawal or graduation with pending disciplinary charges is not specified in current policy; however, its inclusion is pending.

The College Student Code of Conduct, including FLB, FMA, and FM (LOCAL), is currently under review. Revisions to those policies, including the attached draft amendment, which addresses withdrawal or graduation for students with pending disciplinary charges, will be presented to the College Board of Trustees for consideration (June 2021) and approval (August 2021). [See FLB (LOCAL), pp. 7-8]] Once approved by the Board, the language will be incorporated into the College Board Policy Manual.

Observation 4.

We were unable to locate provisions for identifying at least one or more responsible employee, confidential employee, and student advocate. (51.290)
Responsible employee for the purposes of Title IX;

- (1) Confidential employee to whom enrolled students may speak confidentially; and
- (2) Student advocate is an enrolled student to whom an enrolled student may speak confidentially?

Recommendation:

Dallas College should develop and implement provisions for identifying at least one or more responsible employee, confidential employee, and student advocate.

Management Response:

Per the College's Sexual Misconduct Policy, all employees of the College, with the exception of "Confidential Employees," are "Responsible Employees" for purposes of compliance with the requirements of Title IX and the policy. This includes all employees within the College's Title IX structure, including but not limited to Title IX Coordinators and Deputy Title IX Coordinators and investigators, as well as faculty, staff, administrators, academic advisors, College public safety personnel, and athletic coaches and staff. [See DIAA (LOCAL), pg. 13; FFDA (LOCAL), pg. 25]].

The College's Sexual Misconduct Policy also defines Confidential Employees. [See DIAA (LOCAL), pg. 12; FFDA (LOCAL), pg. 23]] Information regarding Responsible Employees and Confidential Employees, including those College employees who may serve as confidential resources, is also available on the Dallas College website at:

- <https://www.dallascollege.edu/about/legal/title-ix/pages/default.aspx>

- <https://www.dallascollege.edu/about/legal/title-ix/pages/confidentiality.aspx>

Finally, due to its recent consolidation and reorganization, the College has elected not to designate "Student Advocates" at this time, as permitted by Texas Education Code (TEC) §51.290. The College's Office of Institutional Equity will review this decision, in consultation with appropriate stakeholders, during the College's scheduled biennial review of the Sexual Misconduct Policy.

PERFORMED BY:

Mr. Bobby Lane, CFE, CICA, Compliance Specialist

cc:

THECB

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Dr. Stacey Silverman, Assistant Commissioner, Academic and Health Affairs

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Ms. Cathie Maeyaert, Director, Private Postsecondary Institutions/Title IX Coordinator-Institutions

Dallas College

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Mr. Rob Wendland, General Counsel

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Summary of Results

| Item Number | Bill Reference by Section | Policy Compliance Requirements | Compliance Assessment |
|-------------|---------------------------|---|--------------------------------------|
| 1 | 51.282 (a)(1)(A) | A "Definitions" page and details prohibited behavior. | No Improvement Recommendations Noted |
| 2 | 51.282(a)(2) | Board-approved policy. | |
| 3 | 51.282(b)(1) | Included in student handbook and personnel handbook. | |
| 4 | 51.282(b)(2) | Dedicated webpage and clearly linked to the IHE homepage. | |
| 5 | 51.282(c) | Requires each entering freshman or undergraduate transfer students to attend an orientation on the institution's policy. | |
| 6 | 51.282(d) | Prevention and outreach program that addresses required elements. | |
| 7 | 51.282(e)(1) and (2) | Protocol addresses counseling resources and must allow course drop. | |
| 8 | 51.282(f) | Biennial review and governing board approval of policy revisions. | Improvement Recommendations Noted |
| 9 | 51.283 | Electronic reporting option for an enrolled student or an IHE employee. | No Improvement Recommendations Noted |
| 10 | 51.284 | Provides "Amnesty for Students Reporting Certain Incidents". | Improvement Recommendations Noted |
| 11 | 51.285 | Procedures for documenting a victim request not to investigate and to notify the victim of the IHE's decision whether it will investigate the alleged incident. | No Improvement Recommendations Noted |
| 12 | 51.286 | A disciplinary process for certain violations. | No Improvement Recommendations Noted |
| 13 | 51.287 | Protocol for when a student withdraws or graduates with pending disciplinary charges. | Improvement Recommendations Noted |
| 14 | 51.288 | Trauma-informed investigation training to each peace officer employed by an IHE. | No Improvement Recommendations Noted |
| 15 | 51.289 | IHE has an MOU with one or more of the following: (1) local law enforcement agencies; (2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; or | |

| | | | |
|----|--------|---|---|
| | | (3) hospitals or other medical resource providers. | |
| 16 | 51.290 | Provides for at least one or more responsible employee, confidential employee, and student advocate. Responsible employee for the purposes of Title IX; (1) Confidential employee to whom enrolled students may speak confidentially; and (2) Student advocate is an enrolled student to whom an enrolled student may speak confidentially. | Improvement Recommendations Noted |
| 17 | 51.291 | Addresses confidentiality adheres to these requirements stipulated in this sub-section. | No Improvement Recommendations Noted |
| 18 | 51.293 | Protocols address equal access for students enrolled at or employees of an IHE who are persons with disabilities. | |

PERFORMED BY:

Mr. Bobby Lane, CFE, CICA, Compliance Specialist

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This document is available on the Texas Higher Education Coordinating Board website:
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