

# **Report on Certain Incidents of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at Certain Public and Private/Independent Institutions of Higher Education**

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

**January 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.

Please cite this report as follows: Texas Higher Education Coordinating Board. (2021). Report on Certain Incidents of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at Certain Public and Private/independent Institutions of Higher Education. Austin, TX.

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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.

To satisfy these directives, the THECB conducted the following activities:

- appointed a negotiated rulemaking committee in September 2019 to develop reporting rules through the negotiated rulemaking process;
- formed a training advisory committee in October 2019 to develop recommended training for persons required to report certain incidents of sexual misconduct;
- adopted in December 2019 the rules that establish the requirements for policies and procedures regarding sexual misconduct at postsecondary educational institutions;
- created a website to contain: (1) the training developed for certain postsecondary employees, (2) sample report templates offered as examples for purposes of complying with reporting requirements, and (3) an approved Chief Executive Officer (CEO) Certification Form for CEOs to certify annually by Oct. 31;
- collected and summarized the results of data reports submitted by institutions' CEOs as required by SB 212, communicating with institutional representatives as necessary with respect to submission requirements and deadlines;
- conducted an initial review of certain sexual misconduct reporting and compliance requirements at postsecondary educational institutions, as specified in SB 212 and in accordance with requirements of TEC, Section 51.258(a); and
- began making the necessary preparations to submit its compliance report not later than September 1, 2021, as specified in HB 1735 and in accordance with requirements of TEC, Section 51.292(f).

The THECB's Assistant Commissioner for Internal Audit and Compliance and his staff conducted the review of compliance required by SB 212 in November 2020. The following summarizes institutions' compliance with the directives of SB 212:

- 201 of the 204 postsecondary educational institutions (PEIs) substantially complied with SB 212 reporting requirements established by the THECB.
- The remaining three PEIs may also be in substantial compliance. The review noted discrepancies in the reports submitted to the THECB versus the reports posted on their respective websites. Corrective action and reconciliation between submitted reports and corresponding website information is needed to affirm the accuracy of the three institutions' information.

## 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 J](#)), 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 K](#)), 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.

To satisfy these directives, the THECB conducted the following activities:

- Agency staff appointed a negotiated rulemaking committee in September 2019 to develop reporting rules through the negotiated rulemaking process as specified in Texas Government Code, Chapter 2008. The rules establish requirements for policies and procedures regarding sexual misconduct at postsecondary educational institutions. The 24-member Negotiated Rulemaking Committee (NRMC) on Sexual Harassment/Assault includes representatives from public community colleges, public health-related institutions, public universities, and private/independent colleges and universities. (See [Appendix B](#).)
- The Commissioner of Higher Education appointed a training advisory committee in October 2019 to develop recommended training for persons required to report

certain incidents under TEC, Section 51.252, and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions. The nine-member Title IX Training Advisory Committee is composed of eight members, each of whom is a representative of a postsecondary educational institution as designated by the institution's chief executive officer (CEO), and one member who is a representative of an advocacy organization for victims of sexual assault or family violence. (See [Appendix C.](#))

- The Board of the THECB adopted in December 2019 the negotiated rules agreed upon by consensus by the NRMCM on Sexual Harassment/Assault, as modified by the NRMCM as a result of public comments received. The rules, now codified as Texas Administrative Code (TAC), Title 19, Chapter 3, Subchapter A, establish the requirements for policies and procedures regarding sexual misconduct at postsecondary educational institutions. (See [Appendix G.](#))
- Agency staff created a website (<http://www.theccb.state.tx.us/title-ix-training>) to contain the training developed for certain postsecondary employees by the Title IX Training Advisory Committee. The website includes:
  - a downloadable 100-slide PowerPoint slide deck developed for purposes of training employees to report specified incidents of sexual misconduct;
  - training topics and associated slides in the PowerPoint slide deck recommended for: (1) Title IX coordinators/deputies, (2) responsible employees and mandatory reporters, and (3) confidential employees;
  - reporting templates offered as examples for complying with SB 212 reporting requirements, and a PowerPoint slide deck providing additional training for the sample report templates;
  - Chief Executive Officer (CEO) Certification Form;
  - answers to frequently asked questions; and
  - information concerning additional training resources and materials.
- Agency staff collected and summarized the results of data reports submitted by institutions' CEOs (SB 212 CEO Reports) as required under TEC, Section 51.253(c), communicating with institutional representatives as necessary with respect to submission requirements and deadlines.
- In accordance with requirements of TEC, Section 51.258(a), agency staff conducted an initial review of certain sexual misconduct reporting and compliance requirements at postsecondary educational institutions as specified in SB 212.
- 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.



## **Negotiated Rulemaking Committee on Sexual Harassment/Assault**

### **Establishment, Formation, and Meetings**

In accordance with SB 212, 86th Texas Legislature, codified as TEC, Chapter 51, Subchapter E-2, the THECB formed the Negotiated Rulemaking Committee (NRMC) on Sexual Harassment/Assault to engage all Texas public and private/independent institutions of higher education in developing reporting rules through the negotiated rulemaking process pursuant to Texas Government Code, Section 2008 (Negotiated Rulemaking Act). (See [Appendix B.](#))

### **Results**

The NRMC on Sexual Harassment/Assault's recommendations to the Board of the THECB relating to the proposed repeal of TAC, Title 19, Chapter 3, Subchapter A, Rules 3.11–3.15 and proposed new rules for Chapter 3, Subchapter A, Rules 3.1–3.20, concerning required reporting rules and policies regarding certain incidents of sexual harassment, sexual assault, dating violence, and stalking at postsecondary educational institutions, were adopted unanimously by the Board of the THECB at a Special Called Board Meeting held on Dec. 11, 2019. (See [Appendix G.](#))

## **Title IX Training Advisory Committee**

### **Establishment, Formation, and Meetings**

On Oct. 24, 2019, the Board of the THECB adopted, on an emergency basis, proposed new rules for TAC, Title 19, Chapter 1, Subchapter DD, concerning the establishment of the Title IX Training Advisory Committee (Training Advisory Committee; see [Appendix H](#)). The Training Advisory Committee created the following training: (1) PowerPoint slides and associated materials, and (2) additional reference materials. Members then agreed unanimously that the elected chair and co-chair of the committee would continue to work together to finalize: (1) the report template for Title IX coordinators, (2) a report template for CEOs, and (3) report template training for inclusion on the THECB's Title IX Training website. (See [Appendix C](#).)

### **Results**

After internal review and approval, THECB staff uploaded the following training materials created by the Training Advisory Committee to the THECB's website:

- (1) The comprehensive training materials created by the committee; and
- (2) the suggested report templates and report template supplemental training.

Since the creation of the website, the THECB has provided additional materials recommended by the Training Advisory Committee to the THECB's Title IX Training website, including:

- (1) Chief Executive Officer Certification Form; and
- (2) Frequently Asked Questions document.

See <https://www.highered.texas.gov/institutional-resources-programs/title-ix-training/>.

## SB 212 CEO Reports Received

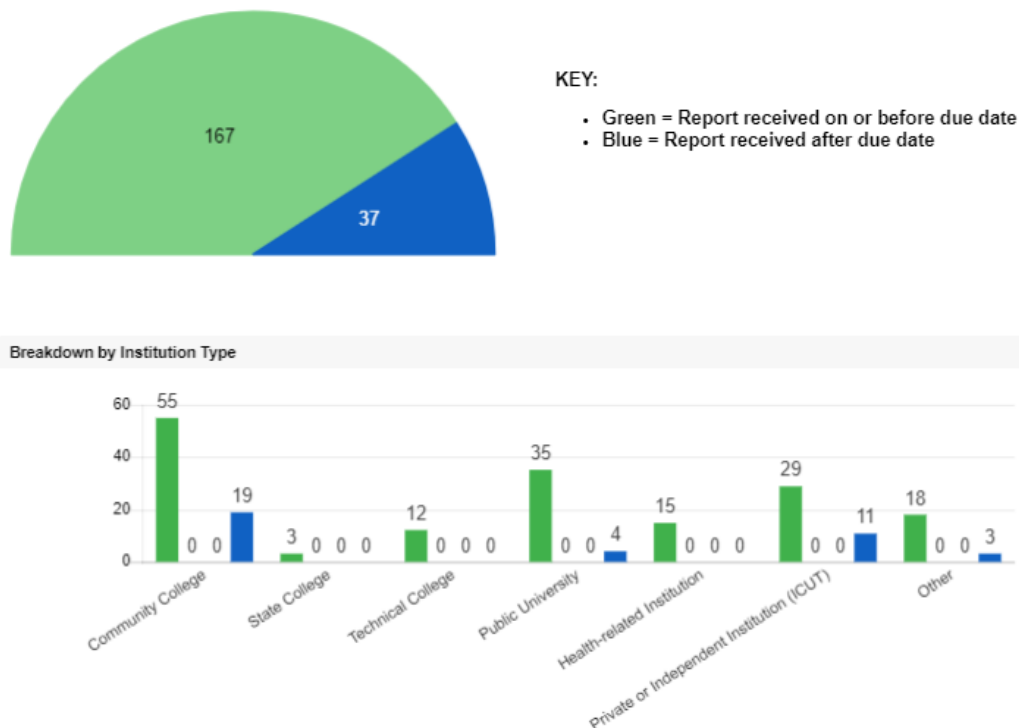
Texas Education Code (TEC), Chapter 51, Subchapters E-2 and E-3, define the postsecondary educational institutions that must be in substantial compliance as an institution of higher education or a private or independent institution of higher education, as defined by TEC, Chapter 61, Section 61.003. The definition for an institution of higher education in TEC, Section 61.003(8), includes other agencies of higher education as defined in the section. To obtain the list of expected reports, all public institutions of higher education and private or independent institutions of higher education that were listed in the program inventory maintained by the THECB were included in the list. Other agencies of higher education as listed in TEC, Chapter 61, Section 61.003(6), were added to the list. Based on this combined list, 204 reports were expected.

Compliance with TEC, Chapter 51, Subchapter E-2, was reviewed for the initial year only by the THECB's Assistant Commissioner of Internal Audit and Compliance and his staff, because many of the other 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. (See [Appendix G](#).) Figure 1 provides a graphic summary of the number of SB 212 CEO reports received as of the date of this report, in compliance with reporting requirements in TEC, Section 51.258(a), as specified in SB 212.

(See [Appendix A](#) for the list of postsecondary educational institutions that submitted SB 212 CEO reports.)

**Figure 1. SB 212 CEO Reports Received**

### SB 212 CEO Reports - Status



## Conclusion

Based on the requirements of SB 212, during the initial year of compliance:

- 201 of the 204 postsecondary educational institutions (PEIs) substantially complied with SB 212 reporting requirements established by the THECB.
- Three institutions may be in substantial compliance once corrective actions related to website reporting and reconciliation with the reports submitted to the THECB are implemented. The THECB anticipates the three institutions can successfully complete corrective actions to reconcile the reports and affirm each institution's commitment to the accuracy of its information.

The THECB will continue to provide support to postsecondary educational institutions as all institutions work toward substantial compliance with TEC, Chapter 51, Subchapter E-2 and E-3 in 2021.

## Appendix A

### SB 212 CEO Reports Submitted by Postsecondary Educational Institutions

**KEY:**

Green=CEO certification and summary data received by Oct. 31, 2020 deadline

Blue=CEO certification and summary data received late (Nov. 1, 2020 to THECB report date)

\*=Institutions were not required to comply but submitted CEO certification and summary data

Institution	Type of Institution	Receipt Status	Date Report Received
Alamo Community College - Northeast Lakeview College (ACCD)	Community College	Green	10/29/20
Alamo Community College - Northwest Vista College (ACCD)	Community College	Green	10/29/20
Alamo Community College - Palo Alto College (ACCD)	Community College	Green	10/29/20
Alamo Community College - San Antonio College (ACCD)	Community College	Green	10/29/20
Alamo Community College - St. Philip's College (ACCD)	Community College	Green	10/29/20
Alvin Community College	Community College	Green	10/23/20
Amarillo College	Community College	Blue	11/04/20
Angelina College	Community College	Green	10/27/20
Austin Community College	Community College	Green	10/29/20
Blinn College District	Community College	Green	10/19/20
Brazosport College	Community College	Green	10/19/20
Central Texas College	Community College	Green	10/30/20
Cisco College	Community College	Green	08/12/20
Clarendon College	Community College	Green	10/16/20
Coastal Bend College	Community College	Green	10/29/20
College of the Mainland Community College District	Community College	Green	10/30/20
Collin County Community College District	Community College	Blue	11/04/20
Dallas College Brookhaven Campus	Community College	Blue	11/06/20
Dallas College Cedar Valley Campus	Community College	Blue	11/06/20
Dallas College Eastfield Campus	Community College	Blue	11/06/20
Dallas College El Centro Campus	Community College	Blue	11/06/20
Dallas College Mountain View Campus	Community College	Blue	11/06/20
Dallas College North Lake Campus	Community College	Blue	11/06/20
Dallas College Richland Campus	Community College	Blue	11/06/20
Del Mar College	Community College	Green	10/16/20

El Paso Community College District	Community College	Blue	11/13/20
Frank Phillips College	Community College	Blue	11/04/20
Galveston College	Community College	Green	10/30/20
Grayson College	Community College	Green	10/28/20
Hill College	Community College	Green	10/26/20
Houston Community College System (HCCS)	Community College	Green	09/16/20
Howard College (HCJCD)	Community College	Green	10/13/20
Kilgore College	Community College	Green	10/02/20
Laredo College	Community College	Green	10/29/20
Lee College	Community College	Blue	11/04/20
Lone Star College - Cy-Fair (LSCS)	Community College	Green	10/27/20
Lone Star College - Houston North (LSCS)	Community College	Green	10/27/20
Lone Star College - Kingwood (LSCS)	Community College	Green	10/27/20
Lone Star College - Montgomery (LSCS)	Community College	Green	10/27/20
Lone Star College - North Harris (LSCS)	Community College	Green	10/27/20
Lone Star College - Tomball (LSCS)	Community College	Green	10/27/20
Lone Star College - University Park (LSCS)	Community College	Green	10/27/20
McLennan Community College	Community College	Green	10/26/20
Midland College	Community College	Blue	11/30/20
Navarro College	Community College	Green	10/14/20
North Central Texas College	Community College	Blue	11/04/20
Northeast Texas Community College	Community College	Green	09/28/20
Odessa College	Community College	Green	10/29/20
Panola College	Community College	Green	10/19/20
Paris Junior College	Community College	Green	10/26/20
Ranger College	Community College	Green	10/19/20
San Jacinto College Central Campus (SJCC)	Community College	Green	10/12/20
San Jacinto College North Campus (SJCC)	Community College	Green	10/12/20
San Jacinto College South Campus (SJCC)	Community College	Green	10/12/20
South Plains College	Community College	Green	10/20/20
South Texas College	Community College	Green	10/28/20
Southwest Collegiate Institute for the Deaf (HCJCD)	Community College	Green	10/13/20
Southwest Texas Junior College	Community College	Blue	11/10/20
Tarrant County College - Connect Campus	Community College	Green	10/22/20
Tarrant County College - Northeast Campus (TCCD)	Community College	Green	10/22/20

Tarrant County College - Northwest Campus (TCCD)	Community College	Green	10/22/20
Tarrant County College - South Campus (TCCD)	Community College	Green	10/22/20
Tarrant County College - Southeast Campus (TCCD)	Community College	Green	10/22/20
Tarrant County College - Trinity River Campus (TCCD)	Community College	Green	10/22/20
Temple College	Community College	Blue	11/17/20
Texarkana College	Community College	Green	10/21/20
Texas Southmost College	Community College	Blue	11/30/20
Trinity Valley Community College	Community College	Blue	11/11/20
Tyler Junior College	Community College	Green	09/29/20
Vernon College	Community College	Green	10/19/20
Victoria College	Community College	Blue	11/10/20
Weatherford College	Community College	Green	10/26/20
Western Texas College	Community College	Green	10/29/20
Wharton County Junior College	Community College	Green	10/22/20
Lamar Institute of Technology (TSUS)	State College	Green	10/29/20
Lamar State College-Orange (TSUS)	State College	Green	10/02/20
Lamar State College-Port Arthur (TSUS)	State College	Green	10/08/20
Texas State Technical College (TSTC)	Technical College	Green	10/30/20
Texas State Technical College-Abilene	Technical College	Green	10/30/20
Texas State Technical College-Breckenridge	Technical College	Green	10/30/20
Texas State Technical College-Brownwood	Technical College	Green	10/30/20
Texas State Technical College-East Williamson County	Technical College	Green	10/30/20
Texas State Technical College-Ft. Bend (TSTC)	Technical College	Green	10/30/20
Texas State Technical College-Harlingen (TSTC)	Technical College	Green	10/30/20
Texas State Technical College-Marshall (TSTC)	Technical College	Green	10/30/20
Texas State Technical College-North Texas (TSTC)	Technical College	Green	10/30/20
Texas State Technical College-Sweetwater	Technical College	Green	10/30/20
Texas State Technical College-Waco (TSTC)	Technical College	Green	10/30/20
Texas State Technical College-West Texas (TSTC)	Technical College	Green	10/30/20
Angelo State University	Public University	Green	10/09/20
Lamar University	Public University	Green	10/29/20
Midwestern State University	Public University	Green	10/26/20

Prairie View A&M University	Public University	Green	10/28/20
Sam Houston State University	Public University	Green	10/09/20
Stephen F. Austin State University	Public University	Green	10/22/20
Sul Ross State University	Public University	Green	10/01/20
Sul Ross State University Rio Grande College	Public University	Green	10/01/20
Tarleton State University	Public University	Green	10/27/20
Texas A&M International University	Public University	Green	10/27/20
Texas A&M University	Public University	Green	10/29/20
Texas A&M University at Galveston	Public University	Green	10/29/20
Texas A&M University-Central Texas	Public University	Green	10/26/20
Texas A&M University-Commerce	Public University	Green	10/29/20
Texas A&M University-Corpus Christi	Public University	Green	10/30/20
Texas A&M University-Kingsville	Public University	Green	10/27/20
Texas A&M University-Qatar	Public University	Green	10/29/20
Texas A&M University-San Antonio	Public University	Blue	11/04/20
Texas A&M University-Texarkana	Public University	Green	10/30/20
Texas Southern University	Public University	Green	10/18/20
Texas State University	Public University	Green	10/22/20
Texas Tech University	Public University	Green	10/02/20
Texas Woman's University	Public University	Green	10/28/20
The University of Texas at Arlington	Public University	Green	10/29/20
The University of Texas at Austin	Public University	Green	10/30/20
The University of Texas at Dallas	Public University	Green	10/30/20
The University of Texas at El Paso	Public University	Green	10/16/20
The University of Texas at San Antonio	Public University	Green	10/08/20
The University of Texas at Tyler	Public University	Green	10/28/20
The University of Texas Permian Basin	Public University	Green	10/26/20
The University of Texas Rio Grande Valley	Public University	Green	10/21/20
University of Houston	Public University	Green	10/16/20
University of Houston-Clear Lake	Public University	Green	10/23/20
University of Houston-Downtown	Public University	Green	10/29/20
University of Houston-Victoria	Public University	Green	10/19/20
University of North Texas	Public University	Blue	11/04/20
University of North Texas at Dallas	Public University	Blue	11/04/20
University of North Texas Dallas College of Law	Public University	Blue	11/04/20
West Texas A&M University	Public University	Green	10/21/20
Sam Houston State University College of Osteopathic Medicine	Health-related Institution	Green	10/09/20
Texas A&M Health Science Center	Health-related Institution	Green	10/29/20



Texas Tech University Health Sciences Center	Health-related Institution	Green	10/16/20
Texas Tech University Health Sciences Center-El Paso	Health-related Institution	Green	10/08/20
The University of Texas at Austin Dell Medical School	Health-related Institution	Green	10/30/20
The University of Texas Health Science Center at Houston	Health-related Institution	Green	10/23/20
The University of Texas Health Science Center at San Antonio	Health-related Institution	Green	10/12/20
The University of Texas Health Science Center at Tyler	Health-related Institution	Green	10/29/20
The University of Texas M.D. Anderson Cancer Center	Health-related Institution	Green	10/08/20
The University of Texas Medical Branch at Galveston	Health-related Institution	Green	09/15/20
The University of Texas Rio Grande Valley - Medical School	Health-related Institution	Green	10/21/20
The University of Texas Southwestern Medical Center	Health-related Institution	Green	10/19/20
University of Houston College of Medicine	Health-related Institution	Green	10/16/20
University of North Texas Health Science Center	Health-related Institution	Green	10/30/20
Baylor College of Medicine	Health-related Institution	Green	10/27/20
Abilene Christian University	Private or Independent Institution (ICUT)	Green	10/16/20
Amberton University	Private or Independent Institution (ICUT)	Green	10/20/20
Austin College	Private or Independent Institution (ICUT)	Green	10/21/20
Baylor University	Private or Independent Institution (ICUT)	Green	10/31/20
Concordia University Texas	Private or Independent Institution (ICUT)	Green	10/29/20
Dallas Baptist University	Private or Independent Institution (ICUT)	Green	10/29/20
East Texas Baptist University	Private or Independent Institution (ICUT)	Green	10/23/20
Hardin-Simmons University	Private or Independent Institution (ICUT)	Blue	11/13/20
Houston Baptist University	Private or Independent Institution (ICUT)	Blue	11/13/20
Howard Payne University	Private or Independent Institution (ICUT)	Green	10/30/20
Huston-Tillotson University	Private or Independent Institution (ICUT)	Blue	11/12/20
Jacksonville College	Private or Independent Institution (ICUT)	Green	10/22/20
Jarvis Christian College	Private or Independent Institution (ICUT)	Green	10/29/20
LeTourneau University	Private or Independent Institution (ICUT)	Green	10/30/20

Lubbock Christian University	Private or Independent Institution (ICUT)	Green	10/14/20
McMurry University	Private or Independent Institution (ICUT)	Green	10/19/20
Our Lady of the Lake University of San Antonio	Private or Independent Institution (ICUT)	Green	10/29/20
Parker University	Private or Independent Institution (ICUT)	Blue	11/06/20
Rice University	Private or Independent Institution (ICUT)	Green	10/26/20
Schreiner University	Private or Independent Institution (ICUT)	Green	10/26/20
Southern Methodist University	Private or Independent Institution (ICUT)	Green	10/16/20
South Texas College of Law Houston	Private or Independent Institution (ICUT)	Green	09/17/20
Southwestern Adventist University	Private or Independent Institution (ICUT)	Blue	11/10/20
Southwestern Assemblies of God University	Private or Independent Institution (ICUT)	Green	10/30/20
Southwestern Christian College	Private or Independent Institution (ICUT)	Blue	11/17/20
Southwestern University	Private or Independent Institution (ICUT)	Green	10/27/20
St. Edward's University	Private or Independent Institution (ICUT)	Green	10/01/20
St. Mary's University	Private or Independent Institution (ICUT)	Green	09/23/20
Texas Chiropractic College	Private or Independent Institution (ICUT)	Blue	12/01/20
Texas Christian University	Private or Independent Institution (ICUT)	Green	10/27/20
Texas College	Private or Independent Institution (ICUT)	Blue	11/04/20
Texas Lutheran University	Private or Independent Institution (ICUT)	Green	10/19/20
Texas Wesleyan University	Private or Independent Institution (ICUT)	Green	10/25/20
Trinity University	Private or Independent Institution (ICUT)	Green	10/23/20
University of Dallas	Private or Independent Institution (ICUT)	Blue	11/04/20
University of Mary Hardin-Baylor	Private or Independent Institution (ICUT)	Green	10/09/20
University of St. Thomas	Private or Independent Institution (ICUT)	Blue	11/13/20
University of the Incarnate Word	Private or Independent Institution (ICUT)	Green	10/12/20
Wayland Baptist University	Private or Independent Institution (ICUT)	Green	10/23/20
Wiley College	Private or Independent Institution (ICUT)	Blue	11/05/20
Lonestar College System	Other	Green	10/27/20
Panhandle-Plains Historical Museum	Other	Green	10/21/20

Rodent and Predatory Animal Control Service (a part of the Texas A&M AgriLife Extension Service)	Other	Green	10/22/20
Sam Houston Memorial Museum	Other	Green	10/23/20
Texas A&M AgriLife Extension Service	Other	Green	10/19/20
Texas A&M AgriLife Research	Other	Green	10/19/20
Texas A&M Engineering Experiment Station	Other	Blue	11/04/20
Texas A&M Transportation Institute	Other	Green	10/30/20
Texas A&M Engineering Extension Service	Other	Blue	11/05/20
Texas A&M Forest Service	Other	Green	10/19/20
Texas A&M Veterinary Medical Diagnostic Laboratory	Other	Green	10/19/20
Texas Division of Emergency Management	Other	Blue	11/30/20
Texas State University System, System Administration	Other	Green	10/30/20
Texas Tech University Museum	Other	Green	10/22/20
Texas Water Resources Institute	Other	Green	10/22/20
The Texas A&M University System, Administrative and General Offices; Texas A&M AgriLife Research	Other	Green	10/30/20
The University of Texas at El Paso Museum	Other	Green	10/23/20
The University of Texas System, System Administration	Other	Green	10/14/20
University of Houston System	Other	Green	10/20/20
*Hallmark University	Other	Green	10/23/20
*Baptist Health System	Other	Green	10/28/20

## Appendix B

### Members of the Negotiated Rulemaking Committee on Sexual Harassment/Assault

#### Notes:

- The Negotiated Rulemaking Committee (NRMC) on Sexual Harassment/Assault met on Sept. 23, 2019, and on Oct. 16-17, 2019, and provided the Board of the THECB with recommended rules regarding the reporting of incidents of sexual misconduct at postsecondary educational institutions.
- James Goeman, Director of Academic Quality, Academic Quality and Workforce Division, THECB, replaced Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, THECB, on the NRMC on Sexual Harassment/Assault, because Dr. Peebles passed away unexpectedly on Sept. 23, 2019.
- As of the date of this report, the NRMC on Sexual Harassment/Assault has not been formally disbanded by the THECB's Alternative Dispute Resolution Coordinator.

#### Members:

- Krista Anderson, Systemwide Title IX Coordinator, The University of Texas System
- Eve Shatteen Bell, Assistant Vice President and Title IX Coordinator, University of North Texas
- Tim Bessler, Vice Provost for Student Development, Dean of Students, and Title IX Coordinator, St. Mary's University
- Michelle Boone, Director of Title IX Compliance, Angelo State University
- Charlene Buckley, Title IX Coordinator, Austin Community College District
- Dona H. Cornell, Vice President for Legal Affairs, University of Houston System
- James Goeman, Director of Academic Quality, Academic Quality and Workforce Division, Texas Higher Education Coordinating Board
- David Halpern, Assistant General Counsel, Texas A&M University System
- Erika Harrison, Title IX Equity and Diversity Officer, University of Houston-Downtown
- Nelly Herrera, Deputy General Counsel, Texas State University System
- Christopher Holmes, General Counsel, Baylor University
- Tricia Horatio, Associate General Counsel, Dallas County Community College District
- Lecia D. Hughes, Director of Human Resources and Title IX Coordinator, McMurry University
- Claire Iannelli, Dean of Compliance/Judicial Affairs, San Jacinto College
- Cole Johnson, Special Assistant to the President and Interim Chief of Staff, Texas Tech University Health Sciences Center
- Kyle Lowe, Assistant Chief of Police, Texas A&M University-Commerce
- Kevin McGinnis, Chief Risk, Ethics and Compliance Officer, Texas A&M University

- Deana Moylan, Associate Vice President of Diversity & Equal Opportunity and Deputy Title IX Coordinator, The University of Texas Health Science Center at Houston (The University of Texas System)
- Florence Nocar, Chief Equity Diversity Officer, The University of Texas Rio Grande Valley
- Ernesto Olmos, Director of Advising, Amarillo College
- Rachel Rolf, General Counsel, Trinity University
- Erin Sine, Director/Managing Attorney and Title IX Counsel, The University of Texas Southwestern Medical Center
- Audra Taylor, Director of Recruitment & Retention and Title IX Director, North Central Texas College
- Michelle Wilbanks, Title IX Coordinator, The University of Texas at Arlington

## Appendix C

### Members of the Title IX Training Advisory Committee

#### Notes:

- The Title IX Training Advisory Committee (Training Advisory Committee) is a subgroup of the members of the Negotiated Rulemaking Committee on Sexual Harassment/Assault. Members of the Training Advisory Committee are serving a three-year term on the committee.
- During the first meeting of the Training Advisory Committee on Oct. 16, David Halpern, Assistant General Counsel, Texas A&M University System, and Krista Anderson, Systemwide Title IX Coordinator, The University of Texas System, were nominated and elected unanimously by committee members as the chair and co-chair of the Training Advisory Committee, respectively.
- The Training Advisory Committee met on Oct. 16, Oct. 29, Nov. 8, Nov. 19, and Dec. 2, 2019, and provided the THECB with recommended training for Title IX coordinators, deputy Title IX coordinators, and other institutional employees who may receive confidential disclosures from students regarding the reporting of incidents of sexual misconduct at postsecondary educational institutions.
- Upon the recommendation of Texas State University System Chancellor Brian McCall, Rick Gipprich replaced Chancellor McCall's initial recommendation of Rebecca Bernhardt, Policy Coordinator, Texas Association Against Sexual Assault (TAASA), because Ms. Bernhardt no longer worked at TAASA, effective Nov. 1, 2019.

#### Members:

- Krista Anderson, Systemwide Title IX Coordinator, The University of Texas System (Co-Chair)
- Eve Shatteen Bell, Assistant Vice President and Title IX Coordinator, University of North Texas
- Michelle Boone, Director of Title IX Compliance, Angelo State University
- Dona H. Cornell, Vice President for Legal Affairs, University of Houston System
- Rick Gipprich, Program Support Director, Texas Association Against Sexual Assault
- David Halpern, Assistant General Counsel, Texas A&M University System (Chair)
- Erika Harrison, Title IX Equity and Diversity Officer, University of Houston-Downtown
- Florence Nocar, Chief Equity Diversity Officer, The University of Texas Rio Grande Valley
- Rachel Rolf, General Counsel, Trinity University

## Appendix D

### Sample Title IX Coordinator Report Form

#### Title IX Coordinator Report Template

TO: **[Insert Institution's President]**, Chief Executive Officer  
FROM: **[Insert Institution's Title IX Coordinator]**  
DATE: **[Insert Date of Report Submission]**  
RE: Title IX Coordinator Reporting Requirements under Tex. Educ. Code § 51.253(a)

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Under the Texas Education Code TEC, Section 51.253(a), the institution's Title IX Coordinator is required to submit a written report no less than every three months to the institution's Chief Executive Officer regarding reports received from employees who are required to report under the TEC, Section 51.252 and the type of incident described in the employee's report constitutes "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251.

For the purposes of complying with the Title IX Coordinator reporting requirements under Section 51.253(a), the attached written report<sup>1</sup> (Appendix A, Table 1) includes all of the required reporting information to **[Insert Institution's President]**, Chief Executive Officer for **[Insert Institution Name]**, for the 2019-2020 academic year, as of **[Insert Date]**. For the purposes of complying with the Chief Executive Officer's reporting requirements under TEC, Section 51.253(c), Appendix A, Table 2 features information necessary for the Chief Executive Officer's Report to report on any disciplinary actions taken under TEC, Section 51.255.

An attached summary data report (Appendix B), based on the Title IX Coordinator's written report (Appendix A), has also been included for your review. The summary data in Appendix B is categorized based on the reporting requirements under TEC, Section 51.253(c). The reports received may be applicable in multiple reporting categories, and therefore, the summary data in the categories may not add up to the totals of other categories.

Note: Any additional reports received by the Title IX Coordinator that do not meet the required reporting criteria in the Texas Education Code have been omitted for the compliance purposes of this specific report.<sup>2</sup>

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<sup>1</sup> When identifiable, duplicate reports were consolidated into one case number and counted as one report in the summary data, and confidential employee reporting is noted by case number and as a sub-set to the total number of reports received.

<sup>2</sup> For example, reports made by students and all other non-employees (including incidents under 3.5(d)(3)) are excluded from Appendices A and B. Additionally, if a Title IX Coordinator or Deputy Coordinator determines that the type of incident described in a report, as alleged, does not constitute "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, the report is excluded from Appendices A and B. It is the responsibility of the Title IX Coordinator or Deputy Title IX Coordinator to assess each report received and determine whether it is properly included in this report, and if so, to correctly identify the type of incident.

## Appendix A Title IX Coordinator Report 2019-2020 Academic Year

**Table 1. Alleged Conduct Reported by Employees under TEC, Section 51.252**

<b>Report Number</b>	<b>Date Received</b>	<b>Alleged Conduct Reported by Employees Under § 51.252</b>	<b>Investigation Status</b>	<b>Disciplinary Status</b>
0001-2019	08/25/19	<i>Sexual Assault</i>	<i>Formal Investigation Completed, Preponderance of Evidence Met for Sexual Assault</i>	<i>Final Result: Student Hearing Appeal Decision: No Finding of Policy Violation</i>
0002-2019	09/01/19	<i>Sexual Harassment</i>	<i>Informal Resolution Completed</i>	<i>Disciplinary Process: Not Applicable</i>
0003-2019	09/10/19	<i>Dating Violence</i>	<i>Case Dismissed (Administrative Closure), Insufficient Complaint Information</i>	<i>Disciplinary Process: Not applicable</i>
0004-2019	09/13/19	<b>Confidential Employee Reporting:</b> <i>Sexual Assault</i>	<i>Investigation: Not Applicable; no identifiable information</i>	<i>Disciplinary Process: Not Applicable</i>
0005-2019	09/21/19	<i>Stalking</i>	<i>Formal Investigation Completed, Preponderance of Evidence Met for Stalking</i>	<i>Final Result: Student Disciplinary Suspension through Spring 2020</i>
0006-2019	10/5/19	<i>Dating Violence</i>	<i>Formal Investigation Completed, Preponderance of Evidence Not Met</i>	<i>Disciplinary Process: Not Applicable</i>
0007-2019	10/10/19	<i>Sexual Harassment</i>	<i>Formal Investigation Ongoing</i>	<i>Disciplinary Process: Not Applicable</i>
0008-2019	10/12/19	<i>Sexual Assault</i>	<i>Formal Investigation Completed, Preponderance of Evidence Met for Sexual Assault</i>	<i>Disciplinary Process: Student Discipline Process Pending</i>
0009-2019	10/14/19	<b>Confidential Employee Reporting:</b> <i>Dating Violence</i>	<i>Investigation: Not Applicable; no identifiable information</i>	<i>Disciplinary Process: Not Applicable</i>
0010-2019	10/17/19	<i>Sexual Harassment</i>	<i>Formal Investigation Completed, Preponderance of Evidence Met for Sexual Harassment</i>	<i>Final Result: Employee Reprimand</i>
0011-2019	10/19/19	<i>Sexual Harassment</i>	<i>Formal Investigation Completed, Preponderance of Evidence Met for Sexual Harassment</i>	<i>Disciplinary Process: Faculty Grievance Process Pending</i>



**Table 2. Alleged Conduct under TEC, Section 51.255(a)**

<b>Report Number</b>	<b>Date Received</b>	<b>Alleged Conduct Under § 51.255(a)</b>	<b>Investigation Status</b>	<b>Disciplinary Status</b>
0012-2019	10/21/19	<i>Employee's Failure to Report</i>	<i>Formal Investigation Ongoing</i>	<i>Disciplinary Process: Not Applicable</i>

## Appendix B Summary Data Report 2019-2020 Academic Year

<b>Texas Education Code, Section 51.252</b>	
<b>Number of reports received under Section 51.252<sup>3</sup></b>	<b>11</b>
Number of confidential reports <sup>4</sup> under Section 51.252	2
Number of investigations conducted under Section 51.252	7
Disposition <sup>5</sup> of any disciplinary processes for reports under Section 51.252:	
a. Concluded, No Finding of Policy Violation <sup>6</sup>	1
b. Concluded, with Employee Disciplinary Sanction	1
c. Concluded, with Student Disciplinary Sanction	1
d. <b>SUBTOTAL</b>	<b>3</b>
Number of reports under Section 51.252 for which the institution determined not to initiate a disciplinary process <sup>7</sup>	<b>7</b>
<b>Texas Education Code, Section 51.255</b>	
<b>Number of reports received that include allegations of an employee's failure to report or who submits a false report to the institution under Section 51.255(a)</b>	<b>1</b>
Any disciplinary action taken, regarding failure to report or false reports to the institution under <b>Section 51.255(c)</b> :	
a. Employee termination	--
b. Institutional intent to termination, in lieu of employee resignation	--

<sup>3</sup> For example, reports made by students and all other non-employees (including incidents under 3.5(d)(3)) are excluded from Appendices A and B. Additionally, if a Title IX Coordinator or Deputy Coordinator determines that the type of incident described in a report, as alleged, does not constitute "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, the report is excluded from Appendices A and B. It is the responsibility of the Title IX Coordinator or Deputy Title IX Coordinator to assess each report received and determine whether it is properly included in this report, and if so, to correctly identify the type of incident.

<sup>4</sup> "Number of confidential reports" is a sub-set of the total number of reports that were received under Section 51.252, by a confidential employee or office (e.g., Counseling Center, Student Health Center, Victim Advocate for Students, or Student Ombuds).

<sup>5</sup> "Disposition" means "final result under the institution's disciplinary process" as defined in the Texas Higher Education Coordinating Board's (THECB) rules for TEC, Section 51.259 (See 19 Tex. Admin. Code Section 3.6(e) (2019)); therefore, pending disciplinary processes will not be listed until the final result is rendered.

<sup>6</sup> "No Finding of a Policy Violation" in this section refers to instances where there is no finding of responsibility after a hearing or an appeal process; investigations completed with a preponderance of evidence not met are excluded, because it would not have moved forward into a disciplinary process.

<sup>7</sup> The institution may have determined "not to initiate a disciplinary process." The reasons for not initiating a discipline process can include, but are not limited to: case dismissal; insufficient information to investigate; confidential employee reporting (no identifiable information); the respondent's identity was unknown or not reported; the respondent was not university-affiliated; the complainant requested the institution not investigate the report; informal resolution was completed; investigation is ongoing; or investigation was completed with a preponderance of evidence not met.

## Appendix E

### Sample CEO Report Form

#### Chief Executive Officer Report Template

TO: **[Insert Institution's Governing Board]**  
FROM: **[Insert Institution's President]**, Chief Executive Officer  
DATE: **[Insert Date of Report Submission]**  
RE: CEO Reporting Requirements under Tex. Educ. Code § 51.253(c)

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Under the Texas Education Code (TEC), Section 51.253(c), the institution's Chief Executive Officer is required to submit a data report at least once during each fall or spring semester to the institution's governing body and post on the institution's internet website a report concerning the reports received by employees under the TEC, Section 51.252 the type of incident described in the employee's report constitutes "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, and any disciplinary actions taken under TEC, Section 51.255.

For the purposes of complying with the Chief Executive Officer's reporting requirements under TEC, Section 51.253(c), the attached summary data report<sup>8</sup> (Appendix A) includes all of the required reporting information to the **[Insert Institution's Governing Board]** for the 2019-2020 academic year, as of **[Insert Date]**. The summary data in Appendix A is categorized based on the reporting requirements under TEC, Section 51.253(c). The reports received may be applicable in multiple reporting categories, and therefore, the summary data in the categories may not add up to the totals of other categories.

The summary data report is also posted on the **[Insert Institution Webpage]** as per the public reporting requirements under TEC, Section 51.253(c).

Note: Any additional reports received by the Title IX Coordinator that do not meet the required reporting criteria in the Texas Education Code have been omitted for the compliance purposes of this specific report.<sup>9</sup>

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<sup>8</sup> When identifiable, duplicate reports were consolidated and counted as one report in the summary data, and confidential employee reporting is noted as a sub-set to the total number of reports received.

<sup>9</sup> For example, reports made by students and all other non-employees (including incidents under 3.5(d)(3)) are excluded from Appendices A and B. Additionally, if a Title IX Coordinator or Deputy Coordinator determines that the type of incident described in a report, as alleged, does not constitute "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, the report is excluded from Appendices A and B. It is the responsibility of the Title IX Coordinator or Deputy Title IX Coordinator to assess each report received and determine whether it is properly included in this report, and if so, to correctly identify the type of incident.

## Appendix A Summary Data Report 2019-2020 Academic Year

Texas Education Code, Section 51.252	
<b>Number of reports received under Section 51.252<sup>10</sup></b>	<b>11</b>
Number of confidential reports <sup>11</sup> under Section 51.252	2
Number of investigations conducted under Section 51.252	7
Disposition <sup>12</sup> of any disciplinary processes for reports under Section 51.252:	
e. Concluded, No Finding of Policy Violation <sup>13</sup>	1
f. Concluded, with Employee Disciplinary Sanction	1
g. Concluded, with Student Disciplinary Sanction	1
h. <b>SUBTOTAL</b>	<b>3</b>
Number of reports under Section 51.252 for which the institution determined not to initiate a disciplinary process <sup>14</sup>	<b>7</b>

Texas Education Code, Section 51.255	
<b>Number of reports received that include allegations of an employee's failure to report or who submits a false report to the institution under Section 51.255(a)</b>	<b>1</b>
Any disciplinary action taken, regarding failure to report or false reports to the institution under <b>Section 51.255(c)</b> :	
c. Employee termination	--
d. Institutional intent to termination, in lieu of employee resignation	--

<sup>10</sup> Reports made by students and all other non-employees (including incidents under 3.5(d)(3)) are excluded from Appendices A and B. Additionally, if a Title IX Coordinator or Deputy Coordinator determines that the type of incident described in a report, as alleged, does not constitute "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, the report is excluded from Appendices A and B. It is the responsibility of the Title IX Coordinator or Deputy Title IX Coordinator to assess each report received and determine whether it is properly included in this report, and if so, to correctly identify the type of incident.

<sup>11</sup> "Number of confidential reports" is a sub-set of the total number of reports that were received under Section 51.252, by a confidential employee or office (e.g., Counseling Center, Student Health Center, Victim Advocate for Students, or Student Ombuds).

<sup>12</sup> "Disposition" means "final result under the institution's disciplinary process" as defined in the Texas Higher Education Coordinating Board's (THECB) rules for TEC, Section 51.259 [See 19 Texas Administrative Code, Section 3.6(3) (2019)]; therefore, pending disciplinary processes will not be listed until the final result is rendered.

<sup>13</sup> "No Finding of a Policy Violation" in this section refers to instances where there is no finding of responsibility after a hearing or an appeal process; investigations completed with a preponderance of evidence not met are excluded, because it would not have moved forward into a disciplinary process.

<sup>14</sup> The institution may have determined "not to initiate a disciplinary process." The reasons for not initiating a discipline process can include, but are not limited to: case dismissal; insufficient information to investigate; confidential employee reporting (no identifiable information); the respondent's identity was unknown or not reported; the respondent was not university-affiliated; the complainant requested the institution not investigate the report; informal resolution was completed; investigation is ongoing; or investigation was completed with a preponderance of evidence not met.

## Appendix F

### Chief Executive Officer Certification

#### CEO Summary Data Report 2019-2020 Academic Year Reporting Requirements under Texas Education Code, Section 51.253(c)

##### CHIEF EXECUTIVE OFFICER AUTHORIZATION

By signing this statement, I certify that:

1. I understand that under the Texas Education Code (TEC), Section 51.253(c), as Chief Executive Officer (CEO), I am required to submit a data report at least once during each fall or spring semester<sup>15</sup> to the institution's governing body and post on the institution's internet website a report concerning the reports received by employees under the TEC, Section 51.252 the type of incident described in the employee's report that constitutes "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, and any disciplinary actions taken under TEC, Section 51.255.
2. For the purposes of complying with the Chief Executive Officer's reporting requirements under TEC, Section 51.253(c), the attached CEO summary data report<sup>16</sup> includes all of the required reporting information to my institution's governing board for the 2019-2020 academic year starting January 1, 2020 per the effective date of the statute. The summary data are categorized based on the reporting requirements under TEC, Section 51.253(c). The reports received may be applicable in multiple reporting categories, and therefore, the summary data in the categories may not add up to the totals of other categories.
3. The summary data report is also posted on my institution's webpage as per the public reporting requirements under TEC, Section 51.253(c).
4. Any additional reports received by the Title IX Coordinator that do not meet the required reporting criteria in the Texas Education Code have been omitted for the compliance purposes of this specific report.<sup>17</sup>

Please send the CEO summary data report and this signed certification form to:

TIXCEOReport@highered.texas.gov. Questions should be directed to

cathie.maeyaert@highered.texas.gov

**SIGNATURE CEO:** \_\_\_\_\_  
**PRINTED NAME:** \_\_\_\_\_  
**INSTITUTION:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

<sup>15</sup> Substantial compliance includes submitting the data report to the governing body "at least once annually" during either the fall or spring semester, under the Texas Administrative Code (TAC), Section 3.6(c).

<sup>16</sup> When identifiable, duplicate reports were consolidated and counted as one report in the summary data, and confidential employee reporting is noted as a sub-set to the total number of reports received.

<sup>17</sup> For example, reports made by students and all other non-employees are excluded. Also excluded are incidents concerning persons not required to make a report under the TAC, Section 3.5(d). Additionally, if a Title IX Coordinator or Deputy Coordinator determines that the type of incident described in a report, as alleged, does not constitute "sexual harassment," "sexual assault," "dating violence," or "stalking" as defined in the TEC, Section 51.251, the report is excluded. It is the responsibility of the Title IX Coordinator or Deputy Title IX Coordinator to assess each report received and determine whether it is properly included in this report, and if so, to correctly identify the type of incident.

## Appendix G

### Texas Administrative Code, Title 19, Chapter 3

<a href="#">TITLE 19</a>	EDUCATION
<a href="#">PART 1</a>	TEXAS HIGHER EDUCATION COORDINATING BOARD
<a href="#">CHAPTER 3</a>	RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY
<a href="#">SUBCHAPTER A</a>	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

#### **RULE §3.1 Purpose**

The purpose of this subchapter is to establish rules to require public, private, and independent institutions of higher education to report incidents of sexual harassment, sexual assault, dating violence, and stalking; 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 immunities to students and employees who report incidents of sexual harassment, sexual assault, dating violence, and stalking.

#### **RULE §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 these Subchapters.

#### **RULE §3.3 Definitions**

- (a) Coordinating Board or Board--The Texas Higher Education Coordinating Board.
- (b) Course and Scope of Employment--means an employee performing duties in the furtherance of the institution's interests.
- (c) "Dating violence," "sexual assault," and "stalking" have the same 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)).
- (d) 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.
- (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) Substantial Compliance--a postsecondary educational institution has made a good faith effort to comply with the requirements under these rules provided that the deficiencies identified by the Coordinating Board can be readily corrected.

**RULE §3.4 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 harassment, sexual assault, dating violence, and stalking that complies with the electronic reporting requirement in §3.7 of this subchapter (relating to Electronic Reporting Requirement);
- (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 or supportive measures available to those victims at the institution. This section is not intended to limit an institution's ability to implement accommodations to others as needed; 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 or the institution's equivalent(s); 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 (which may be provided online); and

(C) as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under subsection (a) of this section, 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 harassment, sexual assault, dating violence, and stalking 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 harassment, sexual assault, dating violence, and stalking 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 at least each biennium and revise the policy as necessary and obtain approval from the institution's governing board.

#### **RULE §3.5 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.

(1) The employee's duty to report an incident begins on the effective date of these regulations or January 1, 2020, whichever is later;

(2) The employee is required to report an incident regardless of when or where the incident occurred; and

(3) Institutions may establish additional reporting avenues to comply with this section provided that the reports are promptly routed to the 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) In making a report under this section,

(1) the employees of a postsecondary educational institution identified below shall only report as follows:

(A) absent consent from the reporting student, an employee designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking shall only state the type of incident reported and may not include any information that would violate a student's expectation of privacy;

(B) absent consent from the reporting individual, an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking under circumstances that render the employee's communications confidential or privileged under other law shall only state the type of incident reported and may not include any information that would violate an expectation of privacy; or



(C) absent consent from the victim(s), an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking in the course and scope of employment as a healthcare provider, mental health care provider, or other medical provider shall only state the type of incident reported and may not include any information that would violate an expectation of privacy.

(2) This subsection does not affect the employee's duty to report an incident under any other law, including but not limited to, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092 (f)), Texas Family Code Section 261.101, or Health and Safety Code Section 611.004. When multiple confidential employees receive information about the same incident (e.g. student health center or counseling center), only a single report stating the type of incident is required.

(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;

(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; or

(3) a sexual harassment, sexual assault, dating violence, or stalking incident in which the person has either learned of the incident during the course of their institution's review or process or has confirmed with the person or office overseeing the review or process, that the incident has been previously reported.

(e) A person acting in good faith who reports or assists in the investigation of a report of an incident described by this section 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 policy or 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 this section.

### **RULE §3.6 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 ("Title IX Coordinator Report") on the reports received for the institution's reporting period under §3.5, 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 §3.5 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 annually, during either the 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 ("CEO Report") concerning the reports received under §3.5. The CEO report:

- (1) may not identify any person; and
- (2) must include:
  - (A) the number of reports received under §3.5;
  - (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 §3.8.
- (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 §3.5 during that semester.
- (e) For purposes of this section, disposition means the final result under the institution's disciplinary process.
- (f) For all reports under this section:
  - (1) When identifiable, reports may exclude duplicate reports of a single alleged incident;
  - (2) Reports may separately specify the number of confidential reports received by employees designated under section 3.5(c); and
  - (3) The Coordinating Board shall make available to institutions a recommended template for the Title IX Coordinator Report and the CEO Report, which satisfies the reporting requirements of this section.

### **RULE §3.7 Electronic Reporting**

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. 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.

### **RULE §3.8 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.

### **RULE §3.9 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 and Section 3.17 of this Subchapter. 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 reasonable steps the institution determines necessary and consistent with the institution's policy and applicable law 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.

#### **RULE §3.10 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 policy or 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.

#### **RULE §3.11 Student Withdrawal or Graduation Pending Disciplinary Charges; Request for Information from Another Postsecondary Educational Institution**

(a) If a student withdraws or graduates from a postsecondary educational institution pending a disciplinary charge alleging that the student violated the institution's policy or 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, as permitted by state or federal law, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, provide to the requesting institution information relating to a final determination by the institution that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

#### **RULE §3.12 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.

#### **RULE §3.13 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 one or more memoranda of understanding with an entity from one or more of the following categories:

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

**RULE §3.14 Responsible and Confidential Employee**

(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 Paragraph (1).

(b) A confidential employee designated under Subsection (a)(1)(B) of this section may not disclose any communication made by a student to the employee unless the student consents to the disclosure or the employee is required to make the disclosure under Section 3.5(c), state law, or federal law.

**RULE §3.15 Student Advocate**

(a) 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 advocate(s) designated under this subsection.

(b) A student advocate designated under Subsection (a) of this section may not disclose any communication made by a student to the advocate unless the student consents to the disclosure or the advocate is required to make the disclosure under state or federal law.

**RULE §3.16 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.

**RULE §3.17 Confidentiality**

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

- (1) an alleged victim;
- (2) a person who reports an incident to an institution;
- (3) a person who sought guidance from the institution concerning an incident;
- (4) a person who participated in the institution's investigation of an incident; or
- (5) 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 for an investigation of the report or other related hearings;

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

(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; and

(E) potential witnesses to the incident as necessary to conduct an investigation of the report and to the extent required by other law.

(c) For the purposes of this section, investigation includes the coordination of the incident response, implementation of interim measures, adjudication of the report, and disclosure by the institution as required under state or federal law.

### **RULE §3.18 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 §3.5; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee as required by §3.5.

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

(1) reports an incident of sexual harassment, sexual assault, dating violence, and stalking 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 of sexual harassment, sexual assault, dating violence, and stalking.

### **RULE §3.19 Compliance**

(a) The chief executive officer of each postsecondary educational institution shall annually certify in writing to the Coordinating Board, in October of each year, that the institution is in substantial compliance with Texas Education Code Subchapter E-2. The Coordinating Board shall make available to institutions a required template for the certification which satisfies the requirements of this section.

(b) If the Coordinating Board determines that a postsecondary educational institution is not in substantial compliance with Texas Education Code Subchapters E-2 on or after January 1, 2020, and E-3 on or after August 1, 2020, 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, Texas 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.

### **RULE §3.20 Applicability**

Sections 3.1-3.3, 3.5-3.6, 3.8, 3.14, and 3.17-3.20 of this subchapter are effective on January 1, 2020 or 20 days after the publication of these rules in the *Texas Register*, whichever is later. The remainder of this subchapter is effective on August 1, 2020.

### **RULE §3.30 Required Transcript Notation When a Student Is Ineligible to Reenroll Due to Non-academic or Non-financial Reason**

(a) Each postsecondary educational institution as defined by Texas Education Code §51.9364 will publish its process for transcript notations. "Ineligible to reenroll" will be defined by the notating postsecondary educational institution.

(b) For students ineligible to reenroll in a postsecondary educational institution for a non-academic or non-financial reason, including, but not limited to disciplinary actions, each postsecondary educational institution must include on the student's transcript a notation stating the student is ineligible to reenroll in the postsecondary educational institution for a non-academic or non-financial reason. The postsecondary educational institution must use language to indicate the student is ineligible to reenroll in the institution, regardless of instructional modality. The postsecondary educational institution is neither required nor prohibited from stating the specific reason for ineligibility.

(c) If a student withdraws from the postsecondary educational institution prior to final resolution of the postsecondary educational institution's published disciplinary process that may result in the student becoming ineligible to reenroll for a non-academic or non-financial reason, the postsecondary educational institution:

(1) may not end the disciplinary process until the postsecondary educational institution makes a final determination of responsibility, including, if applicable, a determination of whether the student will be ineligible to reenroll in the postsecondary educational institution for a non-academic or non-financial reason; and

(2) shall include on the student's transcript the notation required under subsection (b) of this section if, as a result of the disciplinary process, the student is ineligible to reenroll in the postsecondary educational institution for a non-academic or non-financial reason.

(d) Upon request by a student, a postsecondary educational institution may remove from a student's transcript a notation required under subsection (b) of this section if:

(1) the student becomes eligible to reenroll in the postsecondary educational institution; or

(2) the postsecondary educational institution determines that good cause exists to remove the notation.

## Appendix H

### Texas Administrative Code, Title 19, Chapter 1

<a href="#">TITLE 19</a>	EDUCATION
<a href="#">PART 1</a>	TEXAS HIGHER EDUCATION COORDINATING BOARD
<a href="#">CHAPTER 1</a>	AGENCY ADMINISTRATION
<a href="#">SUBCHAPTER DD</a>	TITLE IX TRAINING ADVISORY COMMITTEE

#### **RULE §1.9531 Authority and Purpose of the Title IX Training Advisory Committee**

(a) Statutory authority for this subchapter is provided in the Texas Education Code (TEC), Chapter 51, §51.294 and §51.260.

(b) The Title IX Training Advisory Committee is created to provide the Board with recommendation(s) regarding the training for responsible and confidential employees and student advocates designated under TEC Section 51.290, Title IX Coordinators and other institutional employees who may receive confidential disclosures from students under Section 51.290.

#### **RULE §1.9532 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Recommended Training--Training developed by the advisory committee for responsible and confidential employees and student advocates designated under Section 51.290, for employees in the course and scope of their employment, and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

#### **RULE §1.9533 Committee Membership and Officers**

(a) The advisory committee consists of nine members appointed by the commissioner of higher education. Eight members must be chief executive officers of postsecondary educational institutions or representatives designated by those officers; and one member must be a representative of an advocacy organization for victims of sexual assault or family violence.

(b) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings. A co-chair shall also be elected by the committee to serve in the presiding officer's stead as needed.

(c) Members shall serve staggered 3-year terms and may serve multiple terms.

#### **RULE §1.9534 Duration**

The committee shall be abolished no later than November 1, 2023, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

#### **RULE §1.9535 Meetings and Tasks of the Committee**

(a) The committee shall meet as required by workload and tasks to meet the deadline listed under subsection (c) of this section. Thereafter the committee shall meet on an annual basis, as required by TEC Section 51.294. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

(b) Tasks assigned the committee include:

(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 and student advocates designated under TEC Section 51.290, for employees in the course and scope of their employment and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

(c) Not later than December 1, 2019, the advisory committee shall develop the recommended training under subsection (b) of this section.

(d) The advisory committee shall annually review and, if necessary, update the training recommended under subsection (b)(2) of this section.

**RULE §1.9536 Report to the Board; Evaluation of Committee Costs and Effectiveness**

The committee shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request



## Appendix I

### **Initial Review of Certain Sexual Misconduct Reporting and Compliance Requirements at Institutions of Higher Education (Dec. 9, 2020); Addendum to Final Report (Jan. 4, 2021)**

#### **EXECUTIVE SUMMARY**

We found that 185 of the 204 institutions of higher education (IHEs) substantially complied with the Senate Bill 212 (SB-212) Chief Executive Officer (CEO) reporting requirements found in Texas Education Code (TEC) Chapter 3, Subchapter A, Section 51.258(a)<sup>18</sup>. While the remaining 19 institutions may also be in substantial compliance, implementation of corrective actions related to website reporting and reconciliation is needed to affirm each institution's commitment to the accuracy of its information. These issues are discussed further in the observations section of this report.

The audit team greatly appreciates the cooperation and assistance provided by Academic Quality & Workforce (AQW) staff members during this review. We look forward to our ongoing collaborative efforts to ensure IHEs' compliance with SB-212.

Please see [Detailed Observations](#) section for additional information.

#### **Review Objective, Scope, and Methodologies**

Our review objective was limited to reviewing compliance with specific SB-212 reporting requirements of TEC, Section 51.258(a) for the 204 IHEs identified by AQW as required to file a report. We collaborated with AQW staff and agreed that for the initial reporting cycle, our audit scope would be limited to the following criteria as noted below:

- IHE filed the report with the THECB on or before October 31, 2020;
- IHE's report included the CEO certification; and
- IHE posted the report on its website as required.

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 IHEs' compliance with the reporting requirements.

We reviewed the information submitted to the THECB and performed testing to address the review objective.

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<sup>18</sup> We considered House Bill 1735 (HB-1735) during this review as well. HB-1735 includes reporting requirements for the THECB that are in Section E-3 of the statute. However, the reporting requirement in this act does not take effect until September 1, 2021. As a result, this review focused on the reporting requirements of SB-212.

## **Background**

This review was included on the 2021 Compliance Monitoring Plan. The reporting process is centralized in the AQW office under the Director, Private Postsecondary Institutions who also acts as the Title IX Coordinator for Institutions.

The 86th Texas Legislature enacted SB-212, amending Texas Education Code (TEC), Chapter 51 by adding Subchapter E-2 regarding reporting certain incidents of sexual harassment, sexual assault, dating violence, or stalking at public and private IHEs. Specifically, Subchapter E-2 requires an IHE's chief executive officer (CEO) to certify to the THECB on an annual basis that it is in substantial compliance with this subchapter. Further, TEC, Section 51.258(b) authorizes the THECB to assess an administrative penalty for failure of the IHE to show substantial compliance with the act.

Additionally, TEC, Section 51.258(g) 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 education institutions. The report will include a summary of the postsecondary education 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 January 1, 2021. No penalties were assessed in this review period.

## **Observations**

Our review found that the majority of IHEs (185 of 204) substantially complied with the CEO reporting requirements and accurately posted reports on their respective websites as noted in Item 1 in the Results Summary. Item 2 reflects other compliance issues as described in the Results Summary on the following page.

### Results Summary

Item	Compliance Category	IHE
1.	Substantial Compliance with statutory report submission requirements	185
2.	Website: a) Unable to locate a filed report on the website b) Discrepancies in information filed with the THECB versus the information posted on the IHE website c) Posted an editable document on the website	10 3 6
	Total	204

As noted in the above summary, we found various reporting issues with the remaining 19 IHEs, including:

- Ten reports were not located on the IHEs' websites.
- Three reports filed with the THECB compared to those posted on the IHE website were discrepant.
- Six reports were posted as Word or PDF documents, all of which could be edited (changed).

Implementation of corrective actions related to website reporting and reconciliation is needed to affirm each institution's commitment to the accuracy of its information.

**PERFORMED BY:**

Mr. Bobby Lane, CFE, CICA, Compliance Specialist, THECB

CC:

**THECB****Board Members****Commissioner's Office**

Mr. Rey Rodriguez, Deputy Commissioner and Chief of Staff  
Ms. Nicole Bunker-Henderson, General Counsel

**Academic Quality Workforce**

Mr. Ray Martinez, J.D., Deputy Commissioner of Academic Affairs and Workforce Education  
Dr. Stacey Silverman, Assistant Commissioner, Academic Quality and Workforce  
Dr. Mary Smith, Assistant Deputy Commissioner, Academic Affairs and Workforce Education  
Ms. Cathie Maeyaert, J.D., Director, Private and Postsecondary Institutions/Title IX Coordinator  
for Institutions

**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



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January 4, 2020

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

Dear Dr. Keller,

I am providing you an addendum to our final report on an *Initial Review of Certain Sexual Misconduct Reporting and Compliance Requirements at Institutions of Higher Education*, Report No. THECB-CM-DR-21-032 issued on December 9, 2020. This addendum will be included in materials provided for the January 2021 Committee on Academic and Workforce Success and the Agency Operations Committee meetings.

The following reflects new information developed since our report was issued:

- 201 of the 204 institutions of higher education (IHEs) substantially complied with the Senate Bill 212 (SB-212) Chief Executive Officer (CEO) reporting requirements found in Texas Education Code (TEC) Title 3, Subtitle A, Chapter 51, Subchapter E-2, Section 51.258(a).
- The remaining three institutions may also be in substantial compliance. We noted discrepancies between the three reports submitted to the THECB versus the reports posted on these institution's respective websites. Implementation of corrective actions related to website reporting and reconciliation is needed to affirm each institution's commitment to the accuracy of its information.

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

Addendum to Initial Review of Certain Sexual Misconduct Reporting and  
Compliance Requirements at Institutions of Higher Education  
Report No. THECB-CM-DR-21-232-A  
January 2021

**PERFORMED BY:**

Mr. Bobby Lane, CFE, CICA, Compliance Specialist, THECB

CC:

**THECB****Board Members****Commissioner's Office**

Mr. Rey Rodriguez, Deputy Commissioner and Chief of Staff  
Ms. Nicole Bunker-Henderson, General Counsel

**Academic Quality Workforce**

Mr. Ray Martinez, J.D., Deputy Commissioner of Academic Affairs and Workforce Education  
Dr. Stacey Silverman, Assistant Commissioner, Academic Quality and Workforce  
Ms. Cathie Maeyaert, J.D., Director, Private and Postsecondary Institutions/Title IX Coordinator  
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Ms. Jennifer Jones, Executive Director

## Appendix J

### 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) [(e)] 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) [(e)] 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.

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President of the Senate

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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.

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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.

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Secretary of the Senate

Approved:

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Date

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Governor

## Appendix K

### 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.

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President of the Senate

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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.

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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.

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Chief Clerk of the House

Approved:

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Date

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Governor



This document is available on the Texas Higher Education Coordinating Board website:  
<http://highered.texas.gov>.

**For more information contact:**

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