



| | |
|-----------------------|---|
| POLICY # | ACI-Title-IX-policy-2019 |
| POLICY SECTION | All Students and Employees |
| POLICY TITLE | Sexual Harassment, Sexual Misconduct and Discrimination on the Basis of Sex – Title IX |
| EFFECTIVE DATE | 07/2019 |
| NEW / REVISED | |

BACKGROUND

Austin Career Institute is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities, Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct, as defined later in this policy (see Definitions and Examples), will not be tolerated and will be subject to disciplinary action. Any student or employee of Austin Career Institute will promptly be disciplined if found in violation of this policy.

To ensure that students, employees and third parties with questions concerning this policy or those who wish to make a complaint of an alleged violation of this policy, a designated Title IX Coordinator has been appointed. In addition, Responsible Persons are employed at each campus location to assist with implementing and enforcing Title IX. Responsible Persons are school employees who have the duty to report incidents of sexual misconduct to the Title IX Coordinator or an employee whom an individual could reasonably infer has this authority. When an investigation is deemed necessary, the Title IX Coordinator and the Responsible Persons act as investigators.

Title IX Coordinator*

Amanda Pincock
Austin Career Institute LLC
8711 Burnet Rd, Suite H98
Austin, TX 78757
512-371-0100
amanda@austincareerinstitute.edu

*Additional information concerning the role and duties of the Title IX Coordinator is provided at the end of this policy.

POLICY

This policy applies to all Austin Career Institute employees, students and other individuals within the school's control, including visitors and applicants for admission or employment; regardless of gender, gender identity or sexual orientation of those involved. This policy applies to conduct regardless of where it occurs, including off-campus property, if the conduct potentially affects the complainant's employment or education with Austin Career Institute or potentially affects the school.

Complaints may be made verbally or in writing. Although not required, Austin Career Institute encourages each complainant to put his or her complaint in writing, providing a detailed description of the alleged events that are the basis for the complaint and a list of witnesses to the events.

Persons found to be in violation of this policy will be subject to disciplinary action, which may include, but is not limited to, verbal or written warnings, suspension, or termination from Austin Career Institute. This policy is supplemental to Austin Career Institute's policies generally prohibiting illegal discrimination and harassment against students and employees, including on the basis of sex, and includes certain additional safeguards and requirements pursuant to Title IX, as fully described below.

Filing a Complaint:

Any student, employee or other person who believes that he or she has been subjected to any form of sex discrimination, sexual harassment, or sexual assault in violation of this policy should make a complaint. Austin Career Institute takes all such complaints seriously. Criminal complaints and policy violations may be submitted simultaneously.

Austin Career Institute strongly encourages any person who wishes to make a complaint under this policy to bring that complaint to the Responsible Persons at their campus (Campus Security Authorities and/or the Austin Career Institute

Title IX Coordinator).

However, a student may also bring such a complaint to a student advisor, area manager, campus support personnel, or educator with whom he or she is comfortable. Likewise, an employee may bring such a complaint to their immediate supervisor, another manager, or employee relations. In each case, the complainant should understand that the complaint will be forwarded to the Title IX Coordinator.

Employee Responsibility:

At times, Austin Career Institute employees may have knowledge of conduct (by witnessing it or, alternatively, by hearing a second-hand report about the conduct) that may constitute a violation of this policy. Should this occur:

- When the witnessed or reported conduct is perpetrated against a student, any supervisory employee, student advisor, or educator who possesses that knowledge is expected to immediately report the matter to their supervisor and the Title IX Coordinator, even if the individual making a report requests that no action be taken; and
- When the witnessed or reported conduct is perpetrated against an employee, any supervisory employee who possesses that knowledge is expected to immediately report the matter to their supervisor and the Title IX Coordinator, even if the individual making a report requests that no action be taken

Employees who fail to meet this reporting expectation will be subject to disciplinary action, up to and including termination.

Confidentiality & Title IX Complaints:

Austin Career Institute seeks to handle each complaint and investigation with professionalism and discretion. A fair and effective investigation often requires that the details of the complaint and/or the identity of the complainant be shared with those individuals involved in and/or interviewed in the investigation. Such individuals will, however, be expected to maintain the confidentiality of the matter to the extent possible.

Before beginning an investigation, Austin Career Institute will seek consent of the complainant to (i) proceed with the investigation and (ii) identify him or her in connection with the complaint. If the complainant requests that no investigation occur or that his or her name not be disclosed, Austin Career Institute will:

- Weigh the request(s) against its broader responsibility to provide an environment free from sex discrimination, sexual harassment, and sexual assault for all, considering the totality of the circumstances, the seriousness of the alleged harassment, whether there have been other harassment complaints about the same individual, etc.
- Inform the complainant whether it can comply with the request(s), as applicable
 - If the request(s) are not granted, conduct the investigation
 - If the request(s) are granted, consider whether there are other steps that may be taken in lieu of investigation and/or identification of the complainant

Resources:

If you experience any form of sexual, domestic, or dating violence, you are encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within four (4) days of the incident. With the examinee's consent, the physical evidence collected during this medical exam can be used in a criminal investigation; however, a person may undergo a SAFE even without contacting, or intending to contact, the police. To undergo a SAFE, go directly to the nearest hospital that provides SAFE services. Local providers of SAFE services can be found by calling (800) 656-4673. Individuals may be prescribed medication by their health provider to prevent sexually transmitted infections and/or pregnancy even if a SAFE is not performed or the police are not contacted.

The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE. Medical care can be provided at a local emergency room or by a private physician.

If an individual experienced or witnessed sexual misconduct, Austin Career Institute encourages the individual to make a report to the police as described above in this policy, even if time has passed since the misconduct occurred. The police may, in turn, share your report with the Title IX Coordinator. Reporting sexual misconduct to law enforcement does not mean the case will automatically go to criminal trial or lead to a disciplinary hearing. When appropriate, the police may be able to assist the individual with a ride to the hospital or with obtaining other resources and services. If an individual qualifies, the police will also be able to assist with applying for a Protective Order through the appropriate district or county attorney. A Protective Order is a civil court order issued to prevent further acts of family violence, sexual assault, or stalking.

Members of the Austin Career Institute community who have Protective Orders are strongly encouraged to provide copies of their orders to Campus Security Authorities.

See Outcomes below, for additional resources.

Investigations

Austin Career Institute will undertake a prompt and thorough investigation, where appropriate. Except in extraordinary circumstances, Austin Career Institute seeks to conclude each such investigation within 30 calendar days. The investigation process generally occurs in three stages:

- Stage 1: Intake of the complaint by the Title IX Coordinator, including determination of whether an investigation may proceed and the identification of the issues to be determined based on the allegations of the complaint
- Stage 2: Investigation of the allegations by the investigator(s), including investigatory interviews and review of any additional evidence
- Stage 3: Notice of outcome determination including, when applicable, disciplinary action(s) and remedial measure(s)

Austin Career Institute seeks to conclude stage one (1) within 10 days, stage two (2) within 15 days of completion of stage one; and stage three (3) within five (5) days of completion of stage two. At times, an extension of these timeframes may be necessary and/or appropriate, due to time taken by a complainant to decide whether to provide consent, unavailability of witnesses, complexity or number of allegations under review, or other factors. Austin Career Institute retains discretion to determine when an extension of the general timelines is warranted based on the totality of the circumstances. Extensions of the timelines, when they occur, will be communicated to the complainant(s).

In this process, the complainant(s) and subject(s) of the complaint may name witnesses and provide other evidence to the investigator(s), as described below. The steps necessary to thoroughly investigate the complaint will vary, but will often include interviews of the complainant(s), the subject(s) of the complaint, and the identified witnesses, as well as a review of relevant documentation and relevant policies. Where the investigation results in a finding of a violation of this policy, Austin Career Institute will take immediate steps to end the conduct, prevent its recurrence, and address its effects. Further information concerning the notification of outcomes is provided below.

Outcomes

At the conclusion of the investigation, the investigator(s) will make a finding of whether a violation of this policy has occurred. In making this decision, the investigator(s) will apply the preponderance of the evidence standard to the factual allegations, by determining whether the alleged conduct is more likely than not to have occurred. As to the finding of facts reached under this standard, the investigator(s) will also decide whether those facts constitute a violation of this policy. The investigator(s) will give the complainant(s), subject(s) of the complaint, and Title IX Coordinator (if not already involved in said investigation) written notification of the outcome (specifically, whether or not a violation of the Title IX policy was found to have occurred). In the event a violation was found to have occurred, Austin Career Institute will impose disciplinary action and, if appropriate, implement other remedial measures. Such other remedial measures for the complainant, where appropriate, will be tailored to the particular circumstances presented and may include, by example, providing opportunities to retake portions of the curriculum and/or quizzes, rubrics or examinations; granting the complainant's request to change campuses or schedule. When implementing corrective actions or other remedial measures, Austin Career Institute will seek to minimize the burden upon the complainant.

The complainant will generally not be provided information of specific disciplinary action taken against other persons, unless the disciplinary action will directly impact the complainant, such as whether and/or when the subject(s) of the complaint may be present in the school environment.

Student Appeals:

In the event that a student party to a complaint disagrees with the outcome of an investigation under this Title IX policy, the student may seek a review of the outcome by submitting a written appeal statement to:

Student Appeals Committee
c/o Austin Career Institute
PO BOX 10837
Austin, TX 78766
Email: contact@AustinCareerInstitute.edu

An appeal under this policy must be made within 14 calendar days of receipt of the written notice of the outcome of the investigation. An appeal may be made on one or more of the following grounds only: one (1) an error occurred that, if corrected, may change the outcome of the investigation; or two (2) new information has arisen, that was not available or known to the student at the time of the investigation, which if considered may change the outcome of the investigation. Information that was known or available to the student during the investigation will not be considered.

The Committee will conduct an impartial review of the appeal and will provide the appealing student with a written determination. The Committee seeks to issue its determination on each appeal within 30 calendar days of its receipt of the appeal; however, this timeframe may be longer in certain cases.

Employee parties to a complaint under the Title IX policy do not have a right of appeal.

Anti-Retaliation Policy:

Austin Career Institute will not retaliate against any person for filing a good-faith complaint or for participating or assisting in good faith in an investigation of alleged sex discrimination, sexual harassment, or sexual assault under this policy. An employee or student who retaliates will be subject to disciplinary action, up to and including termination from Austin Career Institute.

Any student or employee who feels that he or she has been subject to retaliation in violation of this policy should report the matter immediately to the Title IX Coordinator.

Definitions and Examples:

Coercion - The use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail that causes the person to engage in unwelcome sexual activity. A person's words or conduct are sufficient to constitute coercion if they eliminate a reasonable person's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include but are not limited to threatening to "out" someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; and threatening to expose someone's prior sexual activity.

Complainant - The student, employee or third party who presents as the victim of any prohibited conduct under this policy, regardless of whether that person makes the report or seeks action under this policy.

Consent - A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Past consent does not imply future consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

The definition of consent for the crime of sexual assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.

Dating Violence – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined by the victim with consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of domestic violence.

Domestic (Family) Violence– A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to

a spouse of the victim under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.

Hostile Environment– exists when sexual harassment (which is a form of sex-based harassment) is sufficiently severe or pervasive to deny or limit the individual's ability to participate in or benefit from class/clinic participation or school activities or an employee's terms and conditions of employment. A hostile environment can be created by anyone involved in the overall school experience (e.g., administrators, employees, students, and visitors).

In determining whether sex-based harassment has created a hostile environment, Austin Career Institute considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not adequate, that the conduct was unwelcome to the individual who was harassed. To conclude that conduct created or contributed to a hostile environment, the school must also find that a reasonable person in the individual's position would have perceived the conduct as undesirable or offensive.

To ultimately determine whether a hostile environment exists for an individual or individuals, Austin Career Institute considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of the persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected an individual's education or employment.

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

Incapacitation– The inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

Being impaired by alcohol or other drugs is not a defense to any violation of this policy.

Intimidation– Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Other Inappropriate Sexual Conduct – Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional, inappropriate for the workplace or campus and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace or campus. Depending on the facts of a complaint, the conduct may not violate this policy but may violate other Austin Career Institute policies including but not limited to standards of conduct or professionalism policies.

Sexual Assault– An offense that meets the definition of rape, fondling, incest, or statutory rape:

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

Sexual Exploitation– Conduct where an individual takes non-consensual or abusive sexual advantage of another for their own benefit, or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.

Sexual Harassment– Unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's student status, employment, or participation in other school activities; or
- B. Such conduct is sufficiently severe or pervasive that it creates a hostile environment, as defined above.

Sexual harassment is a form of sex discrimination that includes:

- A. Sexual violence, sexual assault, sexual exploitation, stalking, domestic violence and dating violence as defined herein.
- B. Physical conduct, depending on the totality of the circumstances present and frequency and severity, including but not limited to:
 1. unwelcome intentional touching; or
 2. deliberate physical interference with or restriction of movement.
- C. Verbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:
 - explicit or implicit propositions to engage in sexual activity;
 - gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
 - gratuitous remarks about sexual activities or speculation about sexual experiences;
 - persistent, unwanted sexual or romantic attention;
 - subtle or overt pressure for sexual favors;
 - exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
 - deliberate, repeated humiliation or intimidation based upon sex.

Sexual Misconduct – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence, and stalking. The term also includes “other inappropriate sexual conduct,” as defined above. Sexual misconduct can be committed by any person, including strangers or acquaintances.

Sexual Violence – Physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent. The term includes, but is not limited to, rape, sexual assault, sexual battery, sexual coercion, sexual abuse, and/or indecency with a child.

Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition--

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

Role of the Title IX Coordinator

The investigation of complaints under this policy will be overseen by the Title IX Coordinator. The Title IX Coordinator will not conduct investigations, assess credibility of witnesses, or make findings as to whether a violation of this policy has occurred. Rather, his or her role will be to ensure that Austin Career Institute’s Title IX policies and procedures are followed, in part by (i) seeking the complainant’s consent to conduct an investigation and disclose his or her name in connection with the complaint; (ii) guiding the investigator(s) in order to facilitate and support their compliance with this policy; and (iii)

ensuring that the outcome of each such complaint is appropriately communicated. More specifically, the Title IX Coordinator will:

- Upon receiving a complaint of sex discrimination, sexual harassment or sexual assault, seek the consent of the complainant to conduct the investigation and disclose his or her identity in connection with the complaint.
- In the event that a complainant requests that an investigation not be conducted, or that his or her identity not be revealed, communicate the determination on this request to the complainant and direct additional actions as appropriate.
- Recommend any interim protections or other measures to be taken during the course of the investigation, before any findings are determined. Interim measures will be taken within the context of Austin Career Institute policies and might include placing a student or students on an absence for investigation, placing an employee on administrative leave, limiting contact between the parties, or other measures.
- When an investigation may proceed, designate the appropriate investigator(s) to carry out a prompt and impartial investigation.
- Review the procedural requirements for the investigation with the investigator(s), including without limitation that: (i) the complainant(s) and subject(s) of the complaint are provided equal opportunity to provide evidence and to identify witnesses; and (ii) that Austin Career Institute maintain the complaint and investigation confidential to the extent possible.
- Review the investigation documentation to determine whether the investigation, before it is closed, has been sufficient. Where additional steps are merited, the Title IX Coordinator will define those additional steps to be taken by the investigator(s) prior to concluding the investigation.

Additionally, the Title IX Coordinator will document all reports and complaints of sex discrimination, sexual harassment, and sexual assault and establish a protocol for keeping records related to such incidents.

LOCATION MODIFICATIONS

All Austin Career Institutes, July 2019