

Frequently Asked Questions – THECB Title IX Training SB 212 and HB 1735, 86th Legislature Texas Education Code, Chapter 51, Subchapters E-2 and E-3 *As of April 13, 2020*

The Texas Higher Education Coordinating Board (THECB) adopted Title IX training materials and administrative reporting templates¹ from the Title IX Training Advisory Committee (“Committee”) in accordance with SB 212 & HB 1735, passed by the 86th Texas Legislative and signed into law last year. Since then, the THECB has received questions related to the laws and how to apply them to Title IX-related institutional policies, processes, and procedures. The following FAQ’s are based on the questions received by the THECB. The responses have been reviewed, revised and approved by the Committee.

REPORTING REQUIREMENTS - WHO MUST REPORT AN INCIDENT OF SEXUAL MISCONDUCT

1. *Are university peace officers required to report to the Title IX Coordinator? If yes, when and under what circumstances?*

ANSWER: Yes. There is no reporting exemption in the Texas statute for certified peace officers. Peace officers are required to promptly report to the Title IX Coordinator when they witness or receive information (e.g. police report) that the peace officer “*reasonably believes*”² constitutes sexual harassment, sexual assault, dating violence, or stalking”³. However, Title IX coordinators should be sensitive to cases involving a potential or active criminal investigation and temporarily delay actions that may impede or prejudice a criminal investigation and rights of the parties involved.

2. *What if two employees receive the same information about an alleged incident of reportable conduct (e.g. sexual harassment, sexual assault, dating violence, or stalking), and only one of the employees submits a report to the Title IX Coordinator? Is the “non-reporting” employee automatically investigated for allegedly failing to report to the Title IX Coordinator?*

ANSWER: No. When it is alleged that an employee did not promptly report to the Title IX Coordinator, the Title IX Coordinator should review the initial report submitted on the alleged incident and any relevant information of the alleged failure to report, using a “reasonable person standard” to determine if a referral should be made to proper authorities for possible prosecution. The Title IX Coordinator’s review should consider circumstances in which two or more employees receive the information simultaneously or in the course of providing services for which multiple reports are not required by law, e.g. counseling center receptionist, case worker, and counselor.

¹ THECB [Title IX Training](#)

² See Reporting Required for Certain Incidents in [Tex. Edu. Code, Section 51.252\(a\)](#)

³ See Definitions in [Tex. Edu. Code, Section 51.251](#)

3. *Financial aid staff receive financial aid applications, appeal requests, and other types of financial aid information in which students might disclose “sexual trauma” or other alleged incidents of reportable conduct as an explanation for financial need, financial aid appeals, etc. Are financial aid staff required to report to the Title IX Coordinator?*

ANSWER: Yes. The law applies to financial aid employees *in the course and scope of employment*⁴ of postsecondary educational institutions. Such employees should be properly trained to understand and act upon observing or receiving information on a reportable incident.

4. *What if a student or employee discloses an alleged incident of reportable conduct to an employee for purposes other than directly reporting an incident? Are there “extenuating circumstances” that would exempt an employee from being required to report to the Title IX Coordinator?*

ANSWER: No. The law requires employees to promptly report reportable incidents to the Title IX Coordinator. Students are not required to report incidents under the law.

5. *Are university clergypersons exempt from being required to report to the Title IX Coordinator? If yes, under what circumstances?*

ANSWER: No. However, when clergy receive information constituting a reportable incident while acting in their clergy capacity, they must promptly report only the type of incident and no other details received from an individual providing the information with an expectation of confidentiality. Clergy who observe or receive information about a reportable incident when not acting in their clergy capacity, must report all relevant information about the incident, as must most all other employees. The same exception applies to employees who have confidentiality or privilege duties under law, e.g. healthcare providers and counselors.

6. *Are employees required to report to the Title IX Coordinator if a reportable incident allegedly occurred off campus? Or what if the reported incident was allegedly committed by a non-affiliated person of the university?*

ANSWER: Yes. If the reported incident 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 [alleged] incident”⁵ must promptly report to the Title IX Coordinator. The location or date of a reportable incident does not exempt the reporting duty. Confidential reporting requirements are also still applicable⁶.

7. *How do the employee reporting requirements affect the confidentiality and privacy of human subjects in research studies?*

ANSWER: Depending upon the terms and conditions of a project, researchers may enjoy confidential status under law. Institutions should confer with legal counsel for such determinations. The institution

⁴ See Definitions in [19 Tex. Admin. Code Section 3.3](#); see also PPT, Slide 24 in THECB [Title IX Training](#)

⁵ See Reporting Required for Certain Incidents in [Tex. Edu. Code, Section 51.252\(a\)](#); see also PPT, Slide 24 in THECB [Title IX Training](#)

⁶ See PPT, Slide 50 in THECB [Title IX Training](#)

may also designate researchers “with whom students may speak with confidentially”⁷ in the course of participating as human subjects in research studies. If a researcher is designated as confidential, then they would follow the reporting requirements of confidential employees⁸. If a researcher is not designated confidential by the institution, then they are required to report to the Title IX Coordinator all information known⁹.

TITLE IX COORDINATOR AND CEO SUMMARY REPORTS

1. Are institutions required to include reports submitted to the Title IX Coordinator from January 1, 2020 (the effective date of the state statute) and later on the Title IX Coordinator Report? Or are institutions expected to include reports submitted to the Title IX Coordinator as of the start of the Fall 2019 semester?

ANSWER: Institutions are required to include reports submitted to the Title IX Coordinator from *January 1, 2020* and later on a Title IX Coordinator Report¹⁰. The Title IX Coordinator Reports must be submitted to the institution’s Chief Executive Officer (CEO) “not less than once every three months”¹¹.

2. Are institutions required to include reports submitted directly by a complainant (alleged victim) on the Title IX Coordinator Report, if no reports were submitted about this incident from university employees?

ANSWER: Institutions are required to include reports received from “an *employee* who witnesses or receives information”¹² regarding an alleged reportable incident. Institutions may, but are not required to, include reports from non-employees, including students or third parties on a Title IX Coordinator Report¹³.

3. Are institutions required to include reports submitted from student employees (e.g. resident assistants) on the Title IX Coordinator Report? And what are the administrative reporting requirements when an alleged incident is reported by a student employee (e.g. resident assistant) to the Title IX Coordinator?

ANSWER: No. Students who are enrolled at the institution are not subject the reporting requirements of the new law. Moreover, any *employee*¹⁴ who is enrolled as a student at the institution is not required to report to the Title IX Coordinator. Institutions may, but are not required to, include reports from students, including student employees.

⁷ See Reporting Required for Certain Incidents in [Tex. Edu. Code, Section 51.252\(c\)](#); see also PPT, Slide 39 and 43 in THECB [Title IX Training](#)

⁸ See PPT, Slide 50 in THECB [Title IX Training](#)

⁹ See Reporting Required for Certain Incidents in [Tex. Edu. Code, Section 51.252\(b\)](#)

¹⁰ See Report Template Supplemental Training, Slide 4 in THECB [Title IX Training](#)

¹¹ See Administrative Reporting Requirements in [Tex. Edu. Code, Section 51.253\(a\)](#)

¹² See Reporting Required for Certain Incidents in [Tex. Edu. Code, Section 51.252\(a\)](#)

¹³ See Report Template Supplemental Training, Slide 11 in THECB [Title IX Training](#)

¹⁴ See Definitions in [Tex. Edu. Code, Section 51.251](#); see also PPT, Slide 34-35 in THECB [Title IX Training](#)

4. *How does the institution report on an Investigation or Disciplinary Status if there is no applicable reason for an investigation or disciplinary process? For example, how should an informal resolution or an investigation that was completed with a standard of evidence not met be reported on the Title IX Coordinator Report or CEO Report?*

ANSWER: When an investigation and/or disciplinary process is not applicable (e.g. informal resolution) for the report submitted to the Title IX Coordinator, institutions may note on the Title IX Coordinator Report that the Investigation Status and/or Disciplinary Status is “*not applicable*”¹⁵.

Institutions can count *non-applicable* investigations and disciplinary processes in “*Number of reports under Section 51.252 for which the institution determined not to initiate a disciplinary process*”¹⁶ on the CEO Report (Summary Data Report).

5. *Are institutions required to note which reports are confidential reports on the Title IX Coordinator Report?*

ANSWER: No. However, it is recommended that reports separately specify the number of confidential reports received from confidential reporters. Providing the number of confidential reports may provide a more complete context to the report.

6. *What is the difference between Table 1 (reports by employees) and Table 2 (reports about employees) in Appendix A on the Title IX Coordinator Report Template?*

ANSWER: Table 1 captures all reports received *by an employee* who “witnesses or receives information [about an alleged incident] that the employee reasonably believes [the alleged incident could] constitute sexual harassment, sexual assault, dating violence, or stalking...”¹⁷. Table 2 captures all reports received *about an employee who allegedly fails to report or falsely reports*¹⁸ to the Title IX Coordinator.

7. *Are institutions required to include reports of alleged incidents for employee-on-employee cases in the Title IX Coordinator Report? What are the applicable case scenarios?*

ANSWER: Yes. The law terms a reportable incident as one that 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 [alleged] incident”¹⁹.

8. *Are institutions required to include reports of alleged “discrimination,” “retaliation,” “harassment,” and/or other conduct on the Title IX Coordinator Report?*

¹⁵ See Report Template Supplemental Training, Slide 73-85 in THECB [Title IX Training](#); see also Title IX Coordinator Report Template and CEO Report Template in THECB [Title IX Training](#)

¹⁶ See CEO Report Template in THECB [Title IX Training](#); see also Report Template Supplemental Training, Slide 37 in THECB [Title IX Training](#)

¹⁷ See Reporting Required for Certain Incidents in [Tex. Edu. Code, Section 51.252\(a\)](#)

¹⁸ See Failure to Report or False Reports; Offenses in [Tex. Edu. Code, Section 51.255](#)

¹⁹ See Reporting Required for Certain Incidents in [Tex. Edu. Code, Section 51.252\(a\)](#); see also PPT, Slide 24 in THECB [Title IX Training](#)

ANSWER: Institutions are required to include reports of alleged “sexual harassment,” “sexual assault,” “dating violence,” or “stalking”²⁰ in the Title IX Coordinator Report. Institutions are not required to include reports that do not meet the definitions of reportable conduct under the Texas statute.

9. *The information in the Title IX Coordinator Report template footnotes states an incident should not be included in the report if it “does not constitute “sexual harassment,” “sexual assault,” “dating violence,” or “stalking” as defined in the TEC, Section 51.251. Does this equal “no policy violation?”*

ANSWER: A Title IX Coordinator determination that an alleged incident does constitute a reportable incident does not equal a “no policy violation.” Any such determination pertains solely to the requirements of the new state law. Violations of policy should be made in accordance with each institution’s governance.

10. *Are institutions required to include the complainant and respondent affiliations of the institution (e.g. student, employee, non-affiliated) on the Title IX Coordinator Report?*

ANSWER: No. Institutions are not required to include complainant and respondent affiliations of the institution and inclusion is not recommended. For institutions with smaller caseloads, the more information included on the Title IX Coordinator Report may inadvertently identify a person involved. The Committee designed the Title IX Coordinator Report Template and CEO Report Template to minimize report information included so that they remained unidentifiable, per *confidentiality and privacy restrictions*²¹.

11. *Are institutions required to use the Title IX Coordinator Report Template and/or CEO Report Template?*

ANSWER: No, institutions are not required to use the Title IX Coordinator Report Template and/or the CEO Report Template. The Committee designed the Title IX Coordinator Report Template and CEO Report Template to provide the statewide institutions a consistent way of meeting the Texas statute’s administrative reporting requirements²².

12. *How does the institution report on multiple reports involving the same complainant and respondent on the Title IX Coordinator Report?*

ANSWER: *When identifiable*, institutions can consolidate duplicate reports (of the same alleged incident) into one case number and count one time on the Title IX Coordinator Report²³. However, if there are multiple unique incidents alleged that involve the same complainant and respondent, then each alleged incident reported should be included separately on the Title IX Coordinator Report. If multiple reports involving the same complainant and respondent *cannot* be identified as the same alleged incident(s), then the reports should be included separately on the Title IX Coordinator Report.

²⁰ See Definitions in [Tex. Edu. Code, Section 51.251](#); see also PPT, Slide 9-12 in THECB [Title IX Training](#)

²¹ See Confidentiality in [19 Tex. Admin. Code Section 3.17](#); see also PPT, Slide 53-54 in THECB [Title IX Training](#)

²² See Administrative Reporting Requirements in [Tex. Edu. Code, Section 51.253](#)

²³ See PPT, Slide 76 in THECB [Title IX Training](#); see also Report Template Supplemental Training, Slide 14-16 in THECB [Title IX Training](#)

13. Are institutions required to submit a Title IX Coordinator Report to the Chief Executive Officer (CEO) if since January 1, 2020, no reports were submitted to the Title IX Coordinator?

ANSWER: Yes, Title IX Coordinator Reports must be submitted to the institution’s Chief Executive Officer (CEO) “not less than once every three months,”²⁴ regardless if no reported were submitted to the Title IX Coordinator.

An example of “no reports” for the Title IX Coordinator Report:

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

Report Number	Date Received	Alleged Conduct Reported by Employees Under § 51.252	Investigation Status	Disciplinary Status
N/A	N/A	N/A	N/A	N/A

0 reports received for this time period.

14. Are institutions required to submit Title IX Coordinator Reports to THECB?

ANSWER: No, the Title IX Coordinator Reports are required to be submitted to the *institution’s Chief Executive Officer (CEO)*²⁵. However, the CEO is required to certify in writing to the THECB the institution’s substantial compliance with the Texas statute in *October of each year*²⁶.

²⁴ See Administrative Reporting Requirements in [Tex. Edu. Code, Section 51.253\(a\)](#)

²⁵ See Administrative Reporting Requirements in [Tex. Edu. Code, Section 51.253\(a\)](#); see also PPT, Slide 74 in THECB [Title IX Training](#)

²⁶ See Compliance in [19 Tex. Admin. Code Section 3.19](#); see also PPT, Slide 87-88 in THECB [Title IX Training](#)